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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964/1965

No. 607 42

RALPH GINZBURG, ET AL., PETITIONERS,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 4, 1965

CERTIORARI GRANTED APRIL 5, 1965

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Docket Entries

- | <i>Date</i>
1963 | <i>Proceedings</i> |
|---------------------|---|
| 1 Mar. 15 | —True Bill. |
| 2 Mar. 15 | —Motion and Order for summons as to Documentary Books, Inc., filed. Summons exit. |
| 3 Mar. 13 | —Motion and Order for summons as to Eros Magazine, Inc., filed. Summons exit. |
| 4 Mar. 13 | —Motion and Order for summons as to Liaison News Letter, Inc., filed. Summons exit. |
| 5-7 Mar. 28 | —Summons returned "on 3-22-63 served Documentary Books, Inc., Eros Magazine, Inc. and Liaison News Letter, Inc." and filed. |
| 8 Apr. 10 | —Defendants' motion for bill of particulars, filed. |
| 9 Apr. 11 | —Defendants' motion to dismiss indictment, filed. |
| 10 May 7 | —Motion to strike affidavit and exhibits appended to defendants' motion to dismiss indictment filed. |
| 11 May 7 | —Order of Court that motion to strike defendants' affidavit etc. shall be argued at the same time as defendants' motion to dismiss cts. 1 through 8 etc. filed. Noted 5/8/63. |
| — May 8 | —PLEAS: NOT GUILTY as to all defendants on all Counts. (Argument on all motions fixed for 5/17/63 at 2 P. M.) |
| 12 May 8 | —Stipulation of counsel in lieu of defendants' motion for Bill of Particulars and Order of Court approving same, filed. Noted 5/9/63. |

Docket Entries

- | <i>Date</i>
1963 | <i>Proceedings</i> |
|---------------------|---|
| 13 May 14 | —Petition for and Order permitting American Civil Liberties Union to file a brief as an amicus curiae, filed. 5-15-63 noted & notice mailed. |
| 14 May 17 | —Order of Court that the affidavit and 69 exhibits annexed to defts. motion to dismiss are stricken from said motion, filed. 5-20-63 noted & notice mailed. |
| — May 17 | —Hearing sur defendants' motion to dismiss, plaintiff's motion to strike affidavits on defendants' motion to dismiss —denied: plaintiff's motion to strike GRANTED—defendants' motion to dismiss—C. A. V. |
| 15 May 21 | —Transcript of hearing of 5-17-63, filed. |
| 16 May 23 | —Order of Court DENYING defendants' motion to dismiss, filed. 5-24-63 noted & copies mailed. |
| — Jun. 10 | —Non-jury trial—witnesses sworn. |
| 17 Jun. 10 | —Waiver of trial by jury, filed. |
| — Jun. 11 | —Trial resumed. |
| — Jun. 12 | —Trial resumed. |
| — Jun. 13 | —Trial resumed. |
| — Jun. 14 | —Trial resumed. |
| — Jun. 14 | —VERDICT: |

As to Ralph Ginzburg—GUILTY on
Cts. 1 to 28 Incl.

As to Documentary Books, Inc.—
GUILTY on Cts. 1, 2 & 3, 11 to 16
Incl.

Docket Entries

Date
1963

Proceedings

As to Eros Magazine, Inc.—GUILTY on Cts. 7, 8, 9, 10, 17, 18, 19, 20, 21 & 22.

As to Liaison News Letter, Inc.—GUILTY on Cts. 4, 5, 6, 23, 24, 25, 26, 27 & 28 (bail of R. Ginzburg to be entered in \$10,000).

- Jun. 14 —Bond of R. Ginzburg in \$10,000 with Public Service Mutual Ins. Co. as surety, filed.
- 18 Jun. 19 —Stipulation that defendants shall have 25 days from 6-14-63 within which to file motion for new trial, and Order approving same, filed. 6-20-63 noted.
- 19 Jun. 27 —Defendants' motion in arrest of judgment or for new trial, and Memorandum in support thereof, filed.
- 20-24 Jun. 28 —Transcript of testimony of June 10 thru 14, 1963, filed.
- 25 Aug. 6 —Special Findings of Facts, Body, J., filed. 8-6-63 notice mailed.
- 26 Aug. 27 —Stipulation of counsel and Order of Court directing that Defendants' Motion in Arrest of Judgment, etc., shall be considered on written briefs, etc., and without oral argument, filed.
- Sept. 17 —Defendants' motion in arrest of judgment or for a new trial—submitted on briefs. C. A.: V.
- 27 Sept. 23 —Transcript of pleas, filed.

Docket Entries

Date
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Proceedings

- 28 Nov. 21 —Opinion, Body, J. and Order DENYING defendants' motions in arrest of judgment, and in the alternative, for a new trial, and that defendants are called for sentence on Nov. 27, 1963 at 10 a. m., filed. 11-22-63 entered & notice mailed.
- Dec. 19 —SENTENCE as to Ralph Ginzburg:
- On each of Counts 1 to 10 inclusive—
Fine \$1,000.00.
- On each of Counts 11 to 16 inclusive—
Fine \$1,000.00, imprisonment for 3 years, to run concurrently.
- On each of Counts 17 to 22 inclusive—
Fine \$1,000.00, imprisonment for 2 years, to run concurrently with each other and consecutively with sentence imposed on Counts 11 to 16.
- On each of Counts 23 to 28 inclusive—
Fine \$1,000.00 (Total Fines \$28,000.00 and Total Imprisonment—5 years).
- Dec. 19 —SENTENCE as to Documentary Books, Inc.:
- On each of Counts 1 to 3 and 11 to 16 inclusive: Fine \$500.00 (Total Fine \$4,500.00).
- Dec. 19 —SENTENCE as to Eros Magazine, Inc.:
- On each of Counts 7 to 10 and 17 to 22 inclusive: Fine \$500.00 (Total Fine \$5,000.00).

*Docket Entries**Date*

1963

Proceedings

- Dec. 19 — SENTENCE as to Liaison News Letter, Inc.:

On each of Counts 4 to 6 and 23 to 28 inclusive: Fine \$500.00 (Total Fine \$4,500.00).

Eo Die: Execution of sentences stayed pending appeal. Bail fixed at \$10,000.00.

- 29 Dec. 19 — Notice of appeal by defendants, filed. Copy to U. S. Atty. and U. S. Court of Appeals on 12-20-63.

- 30 Dec. 19 — Copy of Clerk's statement of docket entries to U. S. Court of Appeals, filed.

- Dec. 19 — Bail bond on appeal of Ralph Ginzburg in \$10,000 with Resolute Insurance Co. as surety, filed.

1964

- 31 Jan. 6 — Transcript of sentence filed.

- 32 Jan. 8 — Memorandum Re: Impoundment of Exhibits, filed.

- Jan. 10 — Record transmitted to United States Court of Appeals.

- 33 Jan. 10 — Judgment and Commitment, as to Ralph Ginzburg, filed.

- 34 Jan. 10 — Judgment and Commitment as to Documentary Books, Inc., filed.

- 35 Jan. 10 — Judgment and Commitment as to Eros Magazine, Inc., filed.

- 36 Jan. 10 — Judgment and Commitment as to Liaison News Letter, Inc., filed.

Indictment

COUNT I

THE GRAND JURY CHARGES:

On or about November 15, 1962, Ralph Ginzburg and Documentary Books, Inc., the defendants herein, and each of them, at Philadelphia, Pa., in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail according to the direction thereon to Dona Tobin, 500 E. Willow Grove Ave., Phila., Pa., certain non-mailable matter, to wit: a written and printed card, letter, circular, advertisement, and notice giving information, directly and indirectly, where, and how, and from whom, and by what means a certain obscene, lewd, lascivious, indecent, filthy and vile book and writing entitled, "The Housewife's Handbook on Selective Promiscuity," by Rey Anthony, may be obtained, and which said book and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

COUNT II

[Count II is identical to Count I except that the date of mailing is November 17, 1962 and the addressee is Wilbur J. D. Ingham, 1010 Winchester Street, Philadelphia 11, Pennsylvania.]

COUNT III

[Count III is identical to Count I except that the date of mailing is December 12, 1962, the place of use of mails is Havertown, and the addressee is Russell N. Leidy, 209 James Drive, Wynne Glade, Havertown, Pennsylvania.]

Indictment

COUNT IV

THE GRAND JURY FURTHER CHARGES:

On or about November 27, 1963, Ralph Ginzburg and Liaison News Letter, Inc., the defendants herein, and each of them, at New Hope, Penna., in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail according to the direction thereon to Lisette R. Peters, 111 Chapel Road, New Hope, Pennsylvania certain non-mailable matter, to wit: a written and printed card, letter, circular, advertisement, and notice giving information, directly and indirectly, where, and how, and from whom, and by what means a certain obscene, lewd, lascivious, indecent, filthy and vile pamphlet and writing entitled, "Liaison" may be obtained, and which said pamphlet and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

COUNT V

[Count V is identical to Count IV except that the place of use of mails is Havertown and the addressee is Miss Mamie Foery, 6 East Mercer Avenue, Havertown, Pennsylvania.]

COUNT VI

[Count VI is identical to Count IV except that the place of use of mails is Paoli and the addressee is Eleanor Callahan, 9 South Valley Road, Paoli, Pennsylvania.]

Indictment

COUNT VII

THE GRAND JURY FURTHER CHARGES:

On or about November 17, 1962, Ralph Ginzburg and Eros Magazine, Inc., the defendants herein, and each of them, at Philadelphia, in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail according to the direction thereon to Rev. John E. Greening, Burhoime Baptist Church, 905 Cottman Avenue, Philadelphia 11, Pa. certain non-mailable matter, to wit: a written and printed card, letter, circular, advertisement, and notice giving information, directly and indirectly, where and how, and from whom, and by what means a certain obscene, lewd, lascivious, indecent, filthy and vile book and writing entitled, "Eros" may be obtained, and which said book and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

COUNT VIII

[Count VIII is identical to Count VII except that the date of mailing is December 18, 1962, the place of use of mails is Rosemont, and the addressee is Mother Mary Martha, Rosemount College, Rosemont, Pennsylvania.]

COUNT IX

[Count IX is identical to Count VII except that the date of mailing is March 24, 1962, the place of use of mails is Chester, and the addressee is Tom Kaufman, 118 Westminster Street, Chester, Pa.]

Indictment

COUNT X

[Count X is identical to Count VII except that the date of mailing is December 11, 1962, the place of use of mails is Elkins Park, and the addressee is Ogaontz Jr. Hi. Sch., Highschool Rd. & Montgomery Ave., Elkins Park, Pa.]

COUNT XI

THE GRAND JURY FURTHER CHARGES:

On or about Dec. 12, 1962, Ralph Ginzburg and Documentary Books, Inc., the defendants herein, and each of them, at Philadelphia, in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail, according to the direction thereon to Mr. H. J. Zimmermann, 219 Rosemary Lane, Phila. 19, Pa. certain non-mailable matter, to wit; an obscene, lewd, lascivious, indecent, filthy and vile book and writing, entitled: "The Housewife's Handbook on Selective Promiscuity", by Rey Anthony, and which said book and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

COUNT XII

[Count XII is identical to Count XI except that the addressee is Harold Willier, 59 W. Wyneva St., Phila. 44, Pa.]

COUNT XIII

[Count XIII is identical to Count XI except that the addressee is P. C. Pfaff, 1002 Piermont St., Phila. 16, Pa.]

Indictment

COUNT XIV

[Count XIV is identical to Count XI except that the addressee is Francis H. Weinraub, 6312 Trotter St., Phila. 11, Pa.]

COUNT XV

[Count XV is identical to Count XI except that the addressee is Mervin L. Dissinger, Box 6, Johnson Hall, Temple University, Phila. 22, Pa.]

COUNT XVI

[Count XVI is identical to Count XI except that the addressee is H. Hoffmann, 1122 Spruce St., Phila. 7, Pa.]

COUNT XVII

THE GRAND JURY FURTHER CHARGES:

On or about March 14, 1963, Ralph Ginzburg and Eros Magazine, Inc., the defendants herein, and each of them, at Gladwyne, Pa., in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail, according to the direction thereon to Mrs. J. A. Carlson, 1618 Sweetbriar Rd., Gladwyne, Pa., certain non-mailable matter, to wit: an obscene, lewd, lascivious, indecent, filthy and vile book and writing, entitled: "Eros", designated Winter 1962, Vol. I, No. 4, and which said book and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

Indictment

COUNT XVIII

[Count XVIII is identical to Count XVII except that the place of use of mails is Philadelphia and the addressee is William Selmi, Jr., 113 S. Beechwood St., Phila. 3, Pa.]

COUNT XIX

[Count XIX is identical to Count XVII except that the place of use of mails is Philadelphia and the addressee is Dr. Ann H. Ford, 1935 Panama St., Phila. 3, Pa.]

COUNT XX

[Count XX is identical to Count XVII except that the place of use of mails is Philadelphia and the addressee is William E. Grancell, 1810 Rittenhouse St., Phila. 3, Pa.]

COUNT XXI

[Count XXI is identical to Count XVII except that the place of use of mails is Philadelphia and the addressee is Mrs. P. Wilson Daily, 324 Spruce St., Phila. 6, Pa.]

COUNT XXII

[Count XXII is identical to Count XVII except that the place of use of mails is Philadelphia and the addressee is Mrs. P. Wilson Daily, 324 Spruce St., Phila. 6, Pa.]

COUNT XXIII

THE GRAND JURY FURTHER CHARGES:

That during the period from on or about November 5, 1962, to on or about January 2, 1963, the exact date to this

Indictment

Grand Jury unknown, Ralph Ginzburg and Liaison Newsletter, Inc., the defendants herein, and each of them, at Philadelphia, in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, did knowingly use the mails for the mailing, carriage in the mails, and delivery of certain non-mailable matter, and did knowingly cause to be delivered by mail, according to the direction thereon to J. Wallace Davis, 135 South 18th Street, Philadelphia 3, Pennsylvania, certain non-mailable matter, to wit: an obscene, lewd, lascivious, indecent, filthy and vile pamphlet and writing, entitled: "Liaison", Vol. I, No. 1, and which said pamphlet and writing is too obscene, lewd, lascivious, indecent, filthy and vile to be set forth in its entirety upon the records of this Honorable Court, but profert whereof is here made.

In violation of Title 18, United States Code, § 1461.

COUNT XXIV

[Count XXIV is identical to Count XXIII except that the addressee is Raymond W. Engel, Meadow Lane, Philadelphia 14, Pennsylvania.]

COUNT XXV

[Count XXV is identical to Count XXIII except that the addressee is Willard Fish, P. O. Box 7584, Philadelphia 1, Pennsylvania.]

COUNT XXVI

[Count XXVI is identical to Count XXIII except that the place of use of mails is Jenkintown and the addressee is J. Whiting Friel, 795 Glen Road, Jenkintown, Pennsylvania.]

Indictment

COUNT XXVII

[Count XXVII is identical to Count XXIII except that the place of use of mails is Valley Forge and the addressee is G. C. Godwin, Welsh Valley Road, Valley Forge, Pennsylvania.]

COUNT XXVIII

[Count XXVIII is identical to Count XXIII except that the addressee is George D. Morton, 5346 Chew Ave., Apt. 9A, Philadelphia 38, Pennsylvania.]

Defendants' Motion to Dismiss Indictment Under Rule 12 of the Federal Rules of Criminal Procedure

Defendants, Documentary Books, Inc., Liaison News Letter, Inc., and Ralph Ginzburg move to dismiss Counts 1 through 6, 11 through 16, and 23 through 27 of the indictment under Rule 12 of the Federal Rules of Criminal Procedure.

As grounds for this motion defendants state:

1. Prosecution for mailing of the material referred to in Counts 11 through 16 of the indictment is barred by the First Amendment to the Constitution of the United States;
2. The materials referred to in Counts 1 through 6, 11 through 16, and 23 through 27 of the indictment are not "obscene" within the meaning of 18 U. S. C. § 1461;
3. 18 U. S. C. § 1461 is unconstitutional and in violation of the First, Fifth, and Sixth Amendments to the Constitution of the United States in that the statutory standard of obscenity provides no reasonable ascertainable standard of guilt.

Affidavit of Ralph Ginzburg

As further grounds for this motion, defendants refer the Court to the affidavit and exhibits annexed and to defendants' memorandum of law.

DAVID I. SHAPIRO
1411 K Street N. W.
Washington 5, D. C.

SIDNEY DICKSTEIN
1411 K Street N. W.
Washington 5, D. C.

NORMAN A. OSHTRY
20 South 15th Street
Philadelphia 2, Pennsylvania
Attorneys for Defendants

**Affidavit of Ralph Ginzburg, Read in Support of
Foregoing Motion**

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

RALPH GINZBURG, being duly sworn, deposes and says that I am one of the defendants in this action and submit this affidavit in support of defendants' motion to dismiss the indictment under Rule 12(b) of the Federal Rules of Criminal Procedure.

1. "The Housewife's Handbook on Selective Promiscuity" is filed separately with this motion as defendants' Ex. A.

2. Liaison, Vol. I, No. 1, is filed separately with this motion as defendants' Ex. B.

Affidavit of Ralph Ginzburg

3. The advertising material referred to in Counts 1 through 3 of the indictment is annexed to this affidavit as defendants' Ex. C.

4. The advertising material referred to in Counts 4 through 6 of the indictment is annexed to this affidavit as defendants' Ex. D.

5. The reviews of the "Housewife's Handbook on Selective Promiscuity" appearing in Vol. IX. of the *Journal of Human Relations*, Summer 1961 and in the *Journal of American Institute of Hypnosis*, January, 1962 are both annexed hereto as defendants' Ex. E.

6. Prior hereto, and in February, 1962, I wrote over one thousand prominent persons requesting their views on the Housewife's Handbook. I asked them to:

a. Set forth their academic degrees and professional attainments;

b. State what was "hard-core" pornography as measured by contemporary national standards;

c. State whether, in their opinion, the Housewife's Handbook was "hard-core" pornography and if it was, why so, and if it was not, why not; and

d. State their views as to the value, if any, of the Housewife's Handbook to society.

7. All responses which in any way purported to respond to one or more of these questions are annexed hereto as defendants' Exs. 1 through 69. 7 of these exhibits, or about 10%, express the view that the Housewife's Handbook is pornographic.

8. I am informed that prior to the time that defendant Documentary Books, Inc. purchased the reprint rights of

Exhibit E

"The Housewife's Handbook on Selective Promiscuity", Seymour Press, the original publisher, sent said book through the mails with full knowledge of the Post Office for a period of eighteen months and continues to do so to this day.

RALPH GINZBURG

(Sworn to April 11, 1963.)

Exhibit E, Annexed to Foregoing Affidavit

JOURNAL OF THE AMERICAN INSTITUTE OF HYPNOSIS,
JANUARY 1962, LOS ANGELES, CALIF.

REVIEWED BY WM. J. BRYAN, JR., M.D.

The Housewife's Handbook of Selective Promiscuity

By Rey Anthony
Seymour Press; Tuscon Arizona

This mistitled work is neither a handbook nor a treatise on promiscuity. It is on the contrary a brilliant and skillfully written autobiography of a woman who through her own searching analyses has been able largely to free herself from the guilt which permeates the great majority of American adult women (and to a lesser extent, men) on the subject of their sexual behavior. By artfully relating her own experiences, Mrs. Anthony indirectly *shows* the reader rather than tells him how these terrible misconceptions about sex adversely influence the lives of millions of Americans daily. For example, she relates an incident at age 4, during which she became curious about the difference between her sexual organ and that of a small neighborhood boy. The most informed parents today realize such sexual curiosity among young children is normal and treat it as normal behavior, calling for no special comment. Mrs. Anthony relates: "My mother screamed, 'I'll teach you' and

Exhibit E

she shouted, 'don't ever let me catch you doing that again.' She didn't."

Her short humorous replies to her mother's hysterical behavior point up the effect that poor sexual education in childhood results in neurotic behavior in adulthood because of the conflict between normal sexual emotions and drives as opposed to guilt feelings introduced by arbitrary standards of conduct of a half century ago.

Actually it is surprising that this book has never been written a hundred times in the United States already. Her history is no different than the vast army of women, and men too for that matter, who visit the psychoanalyst and the hypnoanalyst daily. In fact, her story is really not different from many average Americans. The great difference lies in the fact that she *tells* her story and she feels no guilt regarding it. The only really bad feature of the book is one last page consisting of a complete misinterpretation of the Holy Bible by a Doctor Robert Lindner which could and should be completely left out. It is not a handbook nor a guide to sexual behavior. Each individual's sexual behavior, like every other part of his behavior, must be decided upon on an individual basis according to his needs and the needs of society around him together with the ethical, moral force by which he lives. The importance in the publication of this book as I see it lies, by and large, together with the importance of the Kinsey Report. That is to say, books like these show us not necessarily what the American female should do or should not do, but what she *IS DOING*. To a great extent it points up with knife-edge sharpness the gross inadequacies regarding sexual education of children and teen-agers. In addition to this, a great many ideas will no doubt cross the reader's mind where research could be done in the field of frigidity, impotence, and other sexual maladies because of the forthright, clearly written autobiography by Mrs. Anthony. The discussion of semantics in sex is superb. Published by Seymour Press, Tucson, Arizona.

Exhibit E

JOURNAL OF HUMAN RELATIONS

SUMMER, 1961 VOL. IX: p. 513

REVIEWED BY DR. ROBERT M. FRUMKIN

The Housewife's Handbook for Promiscuity. Rey Anthony.
Tucson: Seymour Press, 1960.

While the title of the book is somewhat misleading, the contents are not. This book is a profound personal document, a social psychological autobiography, as well as a treatise on sex education. Although it is written for the layman as a personal document, as an introspective study of human interpersonal relations it is of great significance and interest to the behavioral and social scientists, to social workers, marriage and family counselors, lawyers, physicians, anyone who is concerned theoretically or practically with the betterment of human relations.

Mrs. Anthony has been married and divorced three times. She has learned a great deal about sexual behavior during her thirty-six years which are covered in her autobiography. As the mother of four daughters she is quite concerned about sexual attitudes and practices in the United States. At recent meetings of the American Association of Marriage Counselors and other professional groups, Drs. Mary Calderone, Sophia J. Kleegman, and Lena Levine, among other experts on women's problems, have talked much about the need for detailed accounts of a woman's reactions to her sexual experiences, for a longitudinal study of the sexual development and sex education of a woman. Mrs. Anthony's book is that kind. It is one of the few books written today which provides a sane sexual philosophy and program of sex education in a society that some authorities have described as "sexually insane." In fact, this reviewer feels that Mrs. Anthony's book has all the earmarks of a classic on human relations, like Clifford

Defendants' Exhibit 1

W. Beers' *A Mind That Found Itself*. For it is a work inspired by lessons learned from human suffering, and inspired by and full of the love and warmth that sometimes are created in the most tragic and deleterious surroundings.

This book, in short, is one of the most valuable publications on human relations which the author has ever read. He recommends it highly to everyone concerned about the betterment of human relations.

State University of New York

Defendants' Exhibit 1, Annexed to Foregoing Affidavit

DR. THEODOR REIK
401 West End Avenue
New York 24, N. Y.

ENDicott 2-5582

February 14, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

Recovering from a serious illness I cannot answer your questions as fully as they would deserve, but I read the *Handbook* with great attention. I admire the moral courage and the originality of the observation of this book, that will, I hope, be read by a wide circle of cultivated readers. I was especially impressed by the excellent description of the behavior of adolescents and children. The book is unique in several directions.

Very truly yours,

THEODOR REIK

Defendants' Exhibit 2, Annexed to Foregoing Affidavit

Feb. 17, 1963

Dear Mr. Ginzburg:

I have just finished reading "The Housewife's Handbook on Selective Promiscuity," which I think is a valuable contribution to the understanding of human behavior.

One may not agree with the author's philosophy about sex, one may even judge her quite an emotionally disturbed person, but one cannot quarrel with her honesty and humor. Far from being pornographic, this book should make each reader examine his own life more carefully. He may come out with opposite answers to those the author advocates but at least he will have done some thinking.

Sincerely,

LUCY FREEMAN

120 Central Park South
New York, 19

Defendants' Exhibit 3, Annexed to Foregoing Affidavit

1001 East First Street
Bloomington, Indiana
March 5, 1963

Mr. Ralph Ginzburg
Editor and Publisher
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

In answer to your question concerning my opinion of the book by Rey Anthony, of which you are the publisher, I wish to state that I consider this to be a truly significant and valuable book. It constitutes an important record of personal life, particularly as regards its sexual aspects, in

Defendants' Exhibit 3

our contemporary society, revealing widespread conditions that are today far from adequately realized, much less taken into account as they should be, by those dealing either theoretically or practically with human welfare. If we refuse to see a situation we may allow evil to take over, and if we cannot speak to each other about it we will not know where to look for it. The matter is therefore one of grave concern to the entire public.

To suppress this book or penalize its publisher, especially on a criminal charge, by classing it as "hard-core pornography" would be to set a shocking precedent, that might have tragic consequences for freedom of expression and intellectual freedom in general in the United States. It would open the door to a type of authoritarian dictation over matters of psychology and sociology that would, in reaction, promote the growth of underground subversion. It would also tend to promote that unhealthy state of society in which it is a quite accepted practice for people to live according to quite different standards of morality than those which they profess.

The predominant use by the author, Rey Anthony, of autobiographical narrative rather than theoretical discussion (which is however close under the surface in most passages) makes the book all the more effective in getting the reader's attention, allowing him better to grasp the problems involved, and to come to conclusions concerning them. Admittedly, not a few of the incidents will be repellent to the reader. Their impact will thereby be greater and this is fortunate, for they are the ones which it is the most important for him to think about the significance of.

What constitutes "hard-core pornography" varies greatly with time, place and circumstance. The accepted feminine costumes of today would have been considered "hard-core pornography" in this country at the turn of the century, if worn in public. Similarly, in matters of expression in oral and written language, our mores have been

Defendants' Exhibit 3

greatly liberalized during the same period, so that although Rey Anthony's book might have been taken as "hard-core pornography" in 1900 that is certainly no longer the case today. So far as this book is concerned, that is because enough of the population has by this time come to realize the social value of the presentation of facts like those put forth by Mrs. Anthony. In other words, very few people in 1900 would have been prepared to take the book seriously and they would have merely been shocked or titillated by it, passing by its deeper meanings, whereas today its courageous factuality in regard to the experiences recounted serves the important function of making many readers seek ways of changing conditions for the better. Moreover, our notions of what constitutes better are also evolving, and should evolve, and a book as veracious as this offers considerable help in that evolution.

In my opinion, "hard-core pornography" attempts, through words, pictures or actions, to arouse sexual feelings in ways injurious to the society of the given time and place. It thus encourages sexual thoughts and actions that take an anti-social form. I should say that Rey Anthony's book is just the opposite in this respect, since its primary function is in service to society.

Yours sincerely,

Hermann J. Muller

HERMANN J. MULLER, Ph.D., D.Sc.,
winner of Nobel Prize in Physiology
and Medicine in 1946.

HJM:slh

P. S. If my statement or any part of it is used I do not wish to have my connection with Indiana University stated because the above deposition is being made by me as a private citizen, not as an employee of Indiana University, and I do not wish to have this University involved through what I have said.

Defendants' Exhibit 4, Annexed to Foregoing Affidavit

THOMAS E. RARDIN, M. D.

1975 Guilford Road

Columbus 21, Ohio

February 20, 1963

Ralph Ginzburg
Editor & Publisher
Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

In answer to your recent letter concerning my opinion on the propriety of The Housewife's Handbook on Selective Promiscuity, I am happy to give you the following statement.

I have been using this manual for several months in counseling patients having marital difficulties centered about their sexual behavior sphere. When this Handbook was first made available to the medical profession, I ordered several copies and have reordered several times. I have given this book to several professional colleagues of mine and I feel it a valuable addition to the library of every serious student of sexual physiology and psychology.

I do not consider this Handbook pornographic in any manner whatsoever, since it is a most carefully written and phrased document showing one individual's continuous process of developing insight and growth in the sphere of sexual behavior.

I am and have been a practicing physician (Doctor of Medicine) for 32 years, am a member in good standing of all local, state and national medical organizations pertaining to my specialty, which is family practice. I would recommend this book to all doctors of medicine engaged in marriage and other forms of family counseling.

Sincerely yours,

Thomas E. Rardin,

THOMAS E. RARDIN, M. D.

TER:tr

Defendants' Exhibit 5, Annexed to Foregoing Affidavit

HERBERT F. TRAPL, M. D.
109-10 Queens Boulevard
Forest Hills 75, New York
BOulevard 1-2774

Febr. 19th 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg,

Although I gained my M. D. in Prague, 1933, having graduated then from the Czech Charles University, I have brushed up my psychiatry in three years of attending the New York School of Psychiatry where Prof. Sandor Rado, M.D. has taught us the principles of understanding emotional disturbances and seeing in faulty sex practices their main source.

Hard core pornography, as measured by contemporary national standards, is the expression of lewdness, lasciviousness or obscenity by word or picture with the intention to arouse prurient sex feelings in immature or impotent persons.

The Handbook is certainly not hard core pornography as measured by contemporary national standards as it represents a sincere description of selfanalytic observations to help those who suffer from the ill-effects of sexual immaturity, overcome their prudishness and free themselves from emotional cobwebs.

I wish I had the facilities to distribute this book to all my patients, who consult me about their marital and/or sexual problems. This frank and clean discussion of "unspeakable" and alas, so human and cardinal problems of everyone, will help many a sufferer to reach quicker a

Defendants' Exhibit 6

rich and healthy emotional life. Tension is the result of conflicts and orgasmic intercourse the master-mechanism to release tension.

Very sincerely yours

H. F. TRAPL.

Defendants' Exhibit 6, Annexed to Foregoing Affidavit

(Letterhead of)

PETER G. BENNETT, M. D.

February 13, 1963

Mr. Ralph Ginzburg
110 West 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg:

I have just finished Rey Anthony's *The Housewife's Handbook on Selective Promiscuity*, and let me tell you that it is a most impressive book and one that I shall long remember and frequently refer to in my work as a psychoanalyst. Indeed, I have enclosed a note to Mrs. Anthony, which I trust you will forward, simply to express my appreciation and congratulations.

It seems very important to me that the Postmaster General has chosen to prosecute you for using the mails for such a significant work, because it seems crystal clear that in this book there is no pornographic intent or obscene quality. Perhaps with such a clear issue we can see that the conscience of the Postmaster General is relieved once and for all of the moral obligation, which the many letters he is receiving on obscenity, is creating.

As indicated above, I am a psychoanalyst and a member of the Philadelphia Psychoanalytic Institute, American Psychiatric Association and the Philadelphia County Psychi-

Defendants' Exhibit 6

atric Society. In addition to private practice, I am Psychiatric Consultant to Haverford College and an Instructor at the University of Pennsylvania School of Medicine in Psychiatry. However, I must add that I am writing you solely in my capacity as a private citizen, and that I am entirely adverse to the trend in our modern society which tends to treat psychiatrists as specially sanctified authorities in moral and legal questions. The great legal problems of our society can only be definitively solved by mature parents raising their children in such a fashion that there will be relatively less hostility and fear of sexuality, etc. Until the sickness of our society abates, I sorrowfully feel we are required to have certain legal restraints which protect society from the few but also are a burden for those who do not need restraining.

Returning to the question of pornography specifically, it would seem to me that "hard-core pornography by contemporary national standards" must be evaluated by two measures. First, there is the intent of the creator. This is not necessarily easy to determine, but if the intent is to communicate ideas or feelings, including sexual feelings, I would not consider this pornography. If the object is material gain for the creator through an appeal to the sexual curiosity and appetite, I would call this pornography. Obviously, by this standard many movies, comic books and paperback novels are pornographic since they are produced primarily to make money. I do not feel that this is an illegitimate business, but I do recognize that in a sick, repressed society such as ours, there may be a need for some regulation of this business, just as we need some controls over gambling and confidence rackets.

Pornography may also be evaluated in terms of its effectiveness in arousing sexual responses in the recipient. This varies tremendously, but in this regard, legal regulation need only be concerned with the protection of those

Defendants' Exhibit 6

persons who would be harmed by it, just as we only need laws against rape to protect women and children. Whom are we to protect against pornography, and what pornography is harmful? This is a difficult question, but it seems that many children and some adults have been so over-protected against the facts of sexual life that it would conceivably be upsetting and even might contribute to anti-social acting out if they were exposed to certain types of pornography. The types of pornography I have in mind are those which suggest that sex is bad, dirty, and that a sexual relationship is primarily a hostile attack of a man on a woman, or vice versa. (There is an even greater problem in our society with the encouragement of pure hostility of the Mickey Spillane type which goes largely unregulated.)

The *Handbook* is clearly not pornography by the standards I have attempted to define above. It is very much an attempt to communicate some deeply felt ideas about female sexuality. I happen to agree with most of these ideas, but that is not even the point since if I totally disagreed this would not negate the fact that the author has ideas to express and the right to be heard providing she is not grossly harming any of her potential audience. Clearly the author was not primarily concerned with financial gain or fame, since the most she could expect was notoriety. Finally, even if the potential audience included many children I do not see how it could be particularly harmful, whereas for the majority of readers who understand its message at all, it should have a profoundly maturing influence that should make life more meaningful and enjoyable. The author makes it abundantly clear that her inability to find a good husband for herself and father for her children has made her life almost unbearably difficult at times, and we feel sorry for her, and are glad that she has been able to achieve the happiness she has. Nowhere does she encourage prom-

Defendants' Exhibit 6

iscuity at another person's expense, and occasionally she finds slight evidence that it has been helpful to the men and women she has crossed paths with. This is the only criticism that I can imagine a relatively mature adult leveling at the book; that she encouraged marital infidelity and irresponsibility, but this would require a gross misreading of the book. Certainly she uses no new words and describes no new scenes which have not been described in "mailable" literature before.

My total reaction to the *Handbook* was admiration of the author, interest in the content of the book, and enthusiasm for the cause of greater freedom of communication on the subject of sex which she espouses. I recognize that our society is not fully ready to accept the ideas, or in some cases even to read the words she uses, but it will be a better, saner society when it becomes ready. Therefore, I feel that Mrs. Anthony has made a real contribution to society, and I hope that this court case will not only preserve your right to send it through the mails, but that the attendant publicity will get this *Handbook*, the wider reading it deserves.

Very truly yours,

Peter G. Bennett, M. D.
PETER G. BENNETT, M. D.

Defendants' Exhibit 7, Annexed to Foregoing Affidavit

WALLACE C. ELLERBROEK, M. D., F.A.C.S.
Diplomate American Board of Surgery
427 Atlantic Avenue
Long Beach 12, California
Telephone HE 2-4473

Feb. 20, 1963

Mr. Ralph Ginzburg,
% Documentary Books, Inc.,
110 W. 40th St.,
New York 18, New York.

Dear Mr. Ginzburg:

Thank you for the extra copy of "The Housewife's Handbook of Selective Promiscuity"; I already have one copy which is used to loan to patients. I am a specialist in General Surgery, am a Diplomate of the American Board of Surgery, and a Fellow of the American College of Surgeons. I received my M. D. from the University of Iowa in 1944, and since have spent my time split between service in the Navy and in private practice.

My opinion as to the definition of hard-core pornography is as follows: a work which either by intent or coincidentally causes direct sexual stimulation, and which by inference might or might not lead to sexual activity.

It is my considered opinion after carefully re-reading the book that it does not, in whole or in part, in any way constitute "hard-core pornography". It is in no way salacious. As an additional test, I had the book reviewed by four young people, two male, and two female, known to me as of good moral character; they were instructed in advance to note any "sexual stimulation" of any type, and all reported none.

It is my opinion that the book has definite therapeutic value for individuals with sexual problems, and would be

Defendants' Exhibit 8

valuable rather than harmful to anyone who has reached physiological maturity. A further unsolicited opinion is that your other publications are superlative contributions, and will continue to receive my support and recommendation to others, both lay and professional.

Yours very truly,

Wallace C. Ellerbroek, M. D.
WALLACE C. ELLERBROEK, M. D.

WCE/we

Defendants' Exhibit 8, Annexed to Foregoing Affidavit

STANFORD R. GAMM, M. D.
664 N. Michigan Avenue
Superior 7-7480
Chicago 11 Ill.

March 5, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

1) I have an M. D. degree from the University of Illinois College of Medicine. I am currently a practicing psychiatrist and psychoanalyst, assistant professor of psychiatry at Northwestern University, attending psychiatrist at Veterans Administration Research Hospital in Chicago, attending psychiatrist at Michael Reese Hospital in Chicago, and clinical associate at Chicago Institute for Psychoanalysis.

2) To me "hard-core pornography" is easily identifiable as literature of low quality and poor taste, the sole purpose of which is to arouse the reader's sexual desires by any means the writer can invent without regard for literary value, ethical consideration, or total affectional and humanitarian regard.

Defendants' Exhibit 8

3) The Handbook (Housewife's Handbook on Selective Promiscuity, by Rey Anthony) is, in my opinion, not in the least obscene or pornographic. It is simply a woman's autobiographical account of her sexual and affectional life and development from childhood to adulthood, told in a straight forward, unashamed, refreshingly frank manner. I would let my daughters read it without any qualms that "they might be corrupted." Actually, it is my impression that we need more candor about sex, resulting in less emphasis and more equanimity, putting it in its proper place as an important function in life that has highly significant meaning in the total context of one's whole emotional experience. In the last analysis, my thought is simply—"What's all the fuss about?"

4) Partly answered above. Although no great example of literature and not written with any great insight into human behavior, the Handbook does help free us from the "prudish chains" that continue to bind too many American families. In fact, I suspect that such attitudes contribute significantly to the abundant fund of neurotic disturbance in our lives.

Sincerely yours,

Stanford R. Gamm, M. D.
STANFORD R. GAMM, M. D.

SRG/ag

Defendants' Exhibit 9, Annexed to Foregoing Affidavit

WILLIAM L. PURCELL—Librarian of Wistar Institute of Anatomy and Biology, Member of Contributing Staff of "American Record Guide."

Subject: "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony.

"Hard-core pornography" applied to a medium of communication means that its purpose and/or result are to arouse sexual desire in the reader or beholder. "The Housewife's Handbook on Selective Promiscuity" does not fall into this category because it does not dwell on sensual details for the simple reason that it is a book of ideas, a work of ethical philosophy, in the form of a sexual autobiography. So that even the most obtuse or careless reader will not miss the point, these ideas are explicitly formulated in the final chapter. If the purpose of the book were to stimulate the reader's passion, the sexual narrative would be enlarged and handled differently than it is, all unorthodox ideas would be eschewed, and the author would profess conventional standards in a final word of recantation. As the book stands, no author or publisher in their right senses would issue it as pornography to make money.

"The Housewife's Handbook . . ." is undoubtedly a classic and ranks with the Kinsey Reports as one of the half-dozen greatest contributions to our understanding of the psychology of sex made so far in this century. It is a book wrought with literary skill and is profound, sincere and original in its impact; it is courageous and eloquent and high-minded, witty and wise and honest. Like all living and truthful manifestations of the human spirit, this book is a force for morality, for the advancement of goodness and dignity. As an expression of secret thoughts and feelings common to many people but usually repressed, it serves a salutary function of catharsis. For the "average" man it is informative and instructive in an area of knowledge vital to the happiness of each individual but usually

Defendants' Exhibit 10

ignored by our system of education. Always entertaining and easy to read, it has the rare distinction of never being dull in spite of its serious intent; it holds the interest and amuses while it instructs and challenges thought. This book is one of those golden books of spirit and sense that, as Swinburne wrote of "Mlle. de Maupin" is a "holy writ of beauty . . . where man may breathe just for a breathing-space and feel his soul burn as an altar fire to the unknown god of unachieved desire."

Defendants' Exhibit 10, Annexed to Foregoing Affidavit

W. G. PARSEL, M. D.
1862 Placentia Avenue
Costa Mesa, California
LIberty 8-7601
LIberty 8-0881

February 19, 1963

Eros Magazine, Inc.
110 W. 40th St.
New York 18, New York

Attention: Mr. Ralph Ginzburg

Dear Mr. Ginzburg:

In reply to the four questions asked in your letter enclosed with Handbook I would like to reply as follows:

1. Degrees—Bachelor of Science Ohio State University 1950; M. D. Ohio State University 1954. Member of American Medical Association, California Medical Association, Orange County Medical Association, American Academy of General Practice, Aero-Medical Association, staff member Hoag Memorial Hospital, Newport Beach, 8 years of general practice.

Defendants' Exhibit 10

2. An exact answer to this question seems extremely difficult to me. After considerable thought and noting several dictionary definitions of pornography, I still have a great deal of difficulty in rendering a mere opinion. I can only venture to say that apparently most people would consider hardcore pornography something which would initiate a sexual stimulus but also would be of a crude, foul, or disgusting nature. The two concepts seem to me to be somewhat mutually exclusive so not really very satisfactory. I feel that if a person thinks that sex is obscene, than the fault is with the person. Perhaps there is no such thing as "pornography". In short I find it impossible to be dogmatic.

3. This question hinges on the reply to question 2, of course. I have no doubt that certain parts of this book, particularly where the author relates her sexual experiences, would arouse in the reader a sexual stimulus. As to whether this is crude or disgusting is something else again. Most of the book, however, would cause the reader to seriously reflect upon the philosophical and psychological points ventured by the author. In any event I can't consider the book "hardcore pornography" in the sense that most people would define this term.

4. This I think is the most pertinent question. I definitely think that this book is of considerable value to society. This book attempts to communicate what one persons idea of an ideal sexual relationship should be. Comprehensive, sincere, statements by individuals on this subject are desperately needed to counteract the mass of misinformation which is frequently given to the public.

Sincerely yours,

W. G. Parsel, M. D.

W. G. PARSEL, M. D.

Defendants' Exhibit 11, Annexed to Foregoing Affidavit

1835 Eye St., N. W.
Washington 6, D. C.

February 5, 1963

Mr. Ralph Ginzburg
Eros
110 W. 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg:

It has been called to my attention that your publication, *The Housewife's Handbook* has been challenged by the Post Office Department.

I have carefully read this book and would like to go on record, as a person of long experience as a marriage counselor and family life educator and as a psychotherapist who has dealt with many kinds of problems in the field of sexual behavior, in protest against banning of your publication and in support of the therapeutic and educational value of the book. The American public obviously needs such frank, clear, and penetrating accounts of sexual behavior if we are ever to overcome fallacious and prurient conditioning about sex which is still so rampant in our society.

Sincerely yours,

Robert A. Harper
ROBERT A. HARPER, PH.D.

Defendants' Exhibit 12, Annexed to Foregoing Affidavit

P. O. Box 581
West Lafayette, Indiana

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have read *THE HOUSEWIFE'S HANDBOOK ON SELECTIVE PROMISCUITY* by Rey Anthony and I am happy to write to you giving my opinion of this excellent work.

My qualifications are as follows: I have a B.A. (University of Houston), M.A. (State University of Iowa), and an M.S. (Purdue University). At the moment I am Chief Research Psychologist for the HUMAN RELATIONS RESEARCH FUND while completing my dissertation for the Ph.D. degree in Clinical Psychology. I am a member of the following professional organizations: American Psychological Association, American Personnel and Guidance Association, Midwestern Psychological Association, American Speech and Hearing Association, American Association of University Professors, American Association for the Advancement of Science, American Academy of Political and Social Science, and the National Honorary Scientific Society of Sigma XI. I am listed in the 10th edition of *AMERICAN MEN OF SCIENCE*.

Now to answer your questions in order. The above mentioned book cannot in any sense be considered to be hard-core pornography on the basis of contemporary national standards. In point of fact it is more in the nature of a scientific thesis of one woman's observation and unique introspection of her basic sexual nature; her problems, frustrations, and eventual resolutions of her *own* personal problems. The writer is not promiscuous—the book is cer-

Defendants' Exhibit 12

tainly not promiscuous. To label this book—which I'm certain will become a basic classic in understanding female sexual needs—obscene is to border on the ridiculous.

The unique value of this book lies in its honesty and rarity. To anyone familiar with psychological literature it is apparent that there is little, if any, material of an introspective nature with regard to the sexual nature of the female—or the male, for that matter. Material such as Mrs. Anthony places in her book can form the nuclei of a great many scientific experiments that could provide useful answers to many questions.

I assume that any intelligent person reading this book would recognize its value as an educational instrument so I will not belabor this point. In closing I would like to mention its value to other women. Through her writing style, Mrs. Anthony has created a warm and personal document that brings information and a high degree of comfort to women with similar problems.

I do wish you success in your court case Mr. Ginzburg. Since I am also a member of American Civil Liberties Union, you can easily guess which team I shall cheer.

Sincerely yours,

Prentice von Conrad

PRENTICE VON CONRAD
Chief Research Psychologist
HUMAN RELATIONS RESEARCH FUND

PvC:em

Defendants' Exhibit 13, Annexed to Foregoing Affidavit

CHARLES G. McCORMICK, ED. D.
Forty Park Avenue
New York 16, N. Y.

ORegon 9-3736

February 23, 1963

Mr. Ralph Ginzburg,
% Documentary Books, Inc.,
110 West 40th Street,
New York 18, New York.

Dear Mr. Ginzburg:

In response to your letter, I take pleasure in commenting on several items related to *The Housewife's Handbook on Selective Promiscuity*.

By way of introduction, I am a psychologist, certified in both the State of California and New York State. I hold a doctor of Education degree from Columbia University, a Bachelor of Divinity degree from Union Theological Seminary, and a Bachelor of Arts degree from Amherst College. For the past sixteen years I have been a lecturer in psychology at the New School for Social Research in New York City. I am in private practice at the above address, specializing in psychotherapy. I am a member of the American Psychological Association, the New York State Psychological Association, and a Fellow of the American Group Psychotherapy Association. I am also on the editorial board of the *International Journal of Group Psychotherapy*.

"Pornography", in my judgment, is an attitude. It is an attitude of "advantage-taking", colored by emotional deprivation. Pornography exists where the user's limitations permit another person to excite his appetite for "pleasure", without responsibility. Pornography requires

Defendants' Exhibit 13

a combination of elements in the consumer's or distributor's attitude: 1) The object or act must be intrinsically "bad" or "evil" *to him*; 2) it must be pleasurable; 3) it must be important to him to deny any identification with the object or act. Pornography exists only for one who is essentially ashamed and apologetic for his biological inheritance and function.

No material, whether book, picture, sound or act, is in itself pornographic. The conditions of the parties engaged in the exchange create pornography. I have a vivid recollection of a scene where I was a third witness. The other two were a couple of truckmen who were unloading a truck. I was on my way to school, junior high school. We three were audience to the mating of two cats. One of the truckers started to snicker suggestively, condescendingly. The other spoke sharply, "Don't laugh! That's just as sacred to them as it is to you when you do it." The second man, even though he reproved his companion, was obviously enjoying watching the cats experience coitus.

This was my first contact with both pornography and an attitude towards sex that declared it good and enjoyable. The attitude of the first trucker was pornographic. That of the second was more intelligent and adult. Even at the age of twelve I appreciated the difference.

My good fortune in sex appreciation as distinguished from pornography, which is sex depreciation, continued. In high school I studied with Jesuit priests. I am not a Roman Catholic. During a religious Retreat, one of the Jesuits was explaining about reading literature in which there were references to sex, e. g., Shakespeare's plays and sonnets. His explanation went like this: "When you read about a bucolic scene, you will experience sensations related to the texture of grass, the heat of the sun, and the smells of the farmlands. When you read about sex, you must expect to have sensations through your body that

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are associated with genital excitement. These feelings do not mean that the writing is "bad" or "dirty"; and they do not mean that you are "sinful".

Again, here was expressed respect for sexual experience, and sexual pleasure. The difference from pornography was clear and unmistakable. Sex could be enjoyed through a variety of media. It could be debased in any one of them only by the attitude of the participant or participants. While Shakespeare was not himself pornographic, a reader, or a member of his audience might be.

A nine-year-old girl reported to her mother that the teacher had that morning been showing "dirty" pictures to the class. The hysterical mother realized that she had unwittingly educated her child to pornography when she saw the colored slides of the circulatory and respiratory systems. These were the "dirty" pictures. To her daughter, anything pertaining to the human body, below the chin, was "dirty".

The trucker who snickered, the reader of Shakespeare who "drooled", and the little girl who saw "dirty" pictures among the blood vessels all measure *down* to the contemporary standard of "hard-core pornography". Their emotional conditions made this possible.

What is most significant about pornography is, that nobody can ever succeed in "protecting" such people from exposure to "pornography". Wherever they are, there is pornography.

It must be obvious to you by now that in my judgment neither the *Handbook*, nor any other material related to sex can in and of itself constitute pornography. Only to an individual, or to a particular group of individuals under leadership, could such matter become pornographic. Material related to the subject of sex, sexual expression, sexual experience, sexual education, and sexual enjoyment will be healthy or pornographic according to the condition

Defendants' Exhibit 13

of the consumer or of the distributor—and not necessarily to both in the same instance!

I have encountered no pornography in connection with the *Housewife's Handbook on Selective Promiscuity*; neither in the book itself, nor in the promotional material issued by the publisher.

I find the *Handbook* promising as a resource. For anyone who is consciously searching for an understanding of himself or of herself, the experience of this young author should be most helpful in several ways.

1) The universalization of the problems connected with the discovery of genital expression, function, and enjoyment is probably the outstanding service performed by the *Handbook*. The fact that someone else demonstrates first-hand acquaintanceship with what the reader has been through, relieves the reader of the sense of being "different", "peculiar".

2) The fact that someone has investigated a division of knowledge usually fraught with superstition, taboo, and "danger" (the danger associated with getting "caught" by one's parents), and that that someone speaks with confidence and self-respect, should serve to discharge the "magic" and awesomeness of this crucial matter.

3) The soundness of the author's discoveries is another value. The physiological information, the emotional encumbrances (claims), the psychological dimensions, and the cultural implications of all matters sexual are well established, and conscientiously recorded. The reader is exposed to information in a form easily understood. The author writes authoritatively. She knows what she is talking about, and is learning more.

For the psychologist, or psychotherapeutically trained psychiatrist, the book offers an interesting side-note. The author's marital history demonstrates the psycho-dynamic handicap which has accrued to her from her developmental

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period. In spite of her intelligence and her persistent pursuit of knowledge and competence in a great variety of fields, over and over again she allied herself with "good" but inappropriate partners. In writing her book she does exactly the same thing. One example of it is in her use of "authorities" in the second section of the *Handbook*: Her reference to, and use of quotations from Robert Lindner's book are not in keeping with the tone and attitude she herself expresses in her own writing.

I can see countless possibilities for constructive use of this unusual document. I should like to see it remain available to a learning public.

Yours sincerely,

Charles G. McCormick.
CHARLES G. MCCORMICK.

Defendants' Exhibit 14, Annexed to Foregoing Affidavit

DR. EUGENE B. NADLER
Department of Management
Case Institute of Technology
10900 Euclid Avenue
Cleveland 6, Ohio

February 14, 1963.

Mr. Ralph Ginsberg
c/o Documentary Books
110 West 40th Street
New York 18, New York

Dear Mr. Ginsberg,

I am writing to you in response to your appeal which came with *The Housewife's Handbook on Selective Pro-miscuity*, by Rey Anthony.

I hold B. S., M. A., and Ph. D. degrees in psychology, all attained at Western Reserve University. I began work

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as a professional psychologist, in clinical, research, and teaching capacities, several years before acquiring my Ph. D, six years ago. I consider that my specialty is the topic of social attitudes, within the area of social psychology, although I have done research and published professional articles on a variety of topics.

You may be particularly interested in one of these papers, entitled "Authoritarian attitudes toward women and their correlates," which appeared in the *Journal of Social Psychology*, 1959, pp. 113-123, 49. Dr. William R. Morrow was junior author of the paper. In this paper we presented evidence showing that the more chivalrous a man was, as measured by an attitude scale, the more likely it also was that he harbored hostile attitudes toward women, also measured by an attitude scale. It was further shown that both of these attitudes, usually thought to be opposites, were part of a world view that included prejudice toward minority groups and more general anti-democratic attitudes. The meaning of these results are briefly discussed, including chivalry and hostility in sexual matters. You may be interested to know that in doing this study, which was my master's thesis, I had very little previous information to go on, since there is a dearth of literature on this topic, a dearth which Mrs. Anthony's book helps, however slightly, to rectify. You also may be interested to know that this dearth of scholarly literature on the topic of male-female attitudes was balanced only by the enormous popular interest which this paper aroused. The local morning paper, the Cleveland Plain Dealer, gave it a great deal of space. It was picked up by a wire service, United Press I believe, and received coverage across the country. It was the subject of an article by a professional writer, John Gibson, in the Toronto Star. I have friends who tell me that this article produced news items overseas, even in the columns of a ship's newspaper. This enormous interest contrasts sharply with the merit of the

Defendants' Exhibit 14

research, which was simply a very modest scientific effort by a budding professional. It shows how much the public is starved for this kind of information. I enclose a reprint of the paper.

I would define hard-core pornography, by "contemporary national standards," as including any work specifically designed to sexually arouse a target population. There are a number of characteristics of the work that must be taken into account in order to make the decision that a work is of this nature.

1. Building to a climax. Hard-core pornography typically contains scenes in which one sexual act after another is graphically depicted, each more audacious than the previous one, the total coming to some wild climax.

2. Absence of non-sexual elements. The pornographer can't be bothered with how people make their living, the kinds of personalities they have, the problems of everyday living. To deal with these things distracts from his purpose of arousing his audience.

3. Corruption of the super ego. The phrase is Freud's, aptly pointing to the fact that part of the pornographer's job is to allay the feelings of guilt that he may arouse in his treatment of sex. This purpose is achieved by portraying the characters as completely devoid of guilt, chiefly, but also in other ways.

4. Gross exaggeration of the physical aspects of sex. The pornographer typically dwells on the huge organs of the male, the large breasts of the females, the amounts of sexual fluids extruded, etc.

5. Sexual virtuosity. The characters in pornographic works are invariably great lovers. They make no mistakes. They display no awkwardness. They have unlimited capacity for orgasm. They never get tired.

Defendants' Exhibit 14

I would say that if a work contains four out of these five characteristics, in any combination, then it is probably pornographic.

In my judgment, Mrs. Anthony's book is not pornographic. I don't believe there is a single scene in the book that has even one of the abovementioned characteristics, let alone four of them. Rather, it is an exceedingly honest statement of Mrs. Anthony's sexual development, and of the experiences which produced that development. The emphasis is not on how a person produces sexual experience, but rather on how sexual experience produces a person, and there is a world of difference between these two emphases. Mrs. Anthony has had many sexual experiences, some of them good, many of them unfortunate. Taken together, she seems to feel that they made her a better person. She has made a great effort to sort out these experiences and to put them before us with her own interpretation so that perhaps we may benefit thereby. I don't believe that her experiences are very atypical of the general population, but I do believe that her honesty and insight is.

I believe that this book, if widely read and discussed, would be of positive value to society. It raises a great many questions that can be pursued as scientific hypotheses. It contains many opinions which are widely held by the most advanced sections of the scientific community. It takes a question momentous for us all out of the limbo of silence and places it on the table for open discussion. It is possible to disagree with certain sections of it, and to wonder at the many questions it doesn't deal with at all. But it is not possible to remain unaffected by it. I would like to see more books by Mrs. Anthony. She manages to do

Defendants' Exhibit 15

what every teacher aspires to, namely, to stretch the minds of her students.

Sincerely yours,

Eugene B. Nadler, Ph. D.

EUGENE B. NADLER, PH. D.

Assistant Professor.

Defendants' Exhibit 15, Annexed to Foregoing Affidavit

ABRAHAM J. ROSENFELD, M. D.

Stafford House

5555 Wissahickon Avenue

Germantown, Philadelphia 44, Pa.

Victor 3-6670

February 19, 1963

Mr. Ralph Ginsburg
Editor and Publisher
c/o Eros Magazine, Inc.
110 West 40th Street
New York, New York

Dear Mr. Ginsburg:

I will attempt to answer certain questions asked by you concerning my opinion and reactions, specifically those relating to obscenity and pornography of the book, "The Housewife's Handbook on Selective Promiscuity."

I am not a lawyer and am not acquainted with the State or Federal statutes regarding obscenity and pornography. I am an active practicing physician, having begun my practice in 1935, following four years of medical school and two years of internship. I have attended almost yearly post-graduate courses and for the past fifteen years, have limited my practice to the treatment of those diseases requiring the use of Steroids. I am also certified as an Internist and Cardiologist as well as Rheumatologist.

Defendants' Exhibit 15

The use of Steroids in the treatment of Arthritis requires a detailed study of male and female endocrinology. The word STEROID means "like-unto sex hormones." The suffix "oid" means "like unto." Sterones are sex hormones; Estrone—female hormone, and Testosterone—male hormone. Because of my knowledge of this hitherto little-known subject, I have treated many couples and individuals with pre-marital and marital counselling.

I found no sense of obscenity or pornography, not even the minuteness glimmer of same within the handbook. The book under question can be regarded as a mirror reflection, the attitudes, many subconscious, and measures the emotional arrest of the person reading same. What about the book is obscene? The use of certain words which are all, in content, in good taste. Certain parts of the body do have names, eg. Vulva, clitoris, breasts, nipples, and when used in content, should excite no unusual curiosity. Certain verbs which describe an act, such as Fuck, screw, kiss, menstruate, must be used in content, and certainly are not placed in the sentence for pornographic effect.

From the point of view of social acceptance, one may question the "good taste" of describing the frequency and pleasures of extra-marital relationships, but certainly there is nothing obscene or pornographic about same.

Lady Chatterly's Lover is a delightful unrealistic novel concerning extra-marital relations, and the pleasures induced thereby. The book is certainly not obscene or pornographic. Even if one reads between the lines of the implied act of "ano penetrato," and the values derived thereby, it does not make it obscene or pornographic.

I believe the ultimate value lies within the reader, and in my case, it is "good or bad" taste. I believe Henry Miller is in bad taste, and I do not enjoy his personal versions of sex. No one forces a person to read and a book cannot be rammed through the visual parts unto the intellectual conception zone. It must be a voluntary act.

Defendants' Exhibit 15

I believe the Post Master General and his representatives deprive me of my inalienable rights, guaranteed by the Constitution, when he opposes his personal standards of obscenity and pornography to mine. He tells me that my standards are not to be trusted and he will exercise his standards to protect me. I resent this interference with my rights to exercise my own judgment.

I have seen obscene and pornographic material published and distributed with only one purpose in mind—to stimulate any erogenous sex feelings one may have. These include “French” pictures and movies (although most are made in the U. S. A.), showing the sex act in all its combinations, many wierd and impossible; “Midnight Intimacies”; and “Memoirs of Josephine Mutzerbocher.” These I consider obscene and in very bad taste, but I can quote passages in the Bible just as descriptive of obscene sex acts. I can also quote beautiful descriptions of sexual intimacy from the Bible. eg. “Song of Song”, but in very good taste.

Photographic nudes may cross State lines, but not if pubic hair is shown. If the nudes are painted in oils with or without pubic hair, there is no barrier to State lines.

I do not know what is meant by “hard-core pornography;” I only know what appeals to me. I do not believe it is possible to define “hard-core pornography.” If it is detrimental to public morality, then I believe this should be defined, in order to detect deviations.

Certainly, the “Handbook” could only be considered pornographic by one with unnatural sex emotions and usually extremely immature.

The intent of the author is important. Was this written to be pornography? By what stretch of the imagination can any part of the Handbook be said to have been written with this in mind. The same rule can be applied to any passage in and out of content, and pornography cannot be found.

Defendants' Exhibit 15

I believe this book is a good one and of inestimatable value to Society. To my knowledge, I know of at least thirty divorces which would have continued as successful marriages if the "Handbook" had been read by either one or both of the parties. I can recall several families, which if aware of the contents of this handbook, would not have been disrupted, but most likely would have developed a more solid foundation by removing feelings of guilt and inadequacy.

I hope you win your case. I also hope that the Handbook will stimulate many additional women to write honestly and truthfully, of their sex experiences, so that their manifold experiences may lead to broad conclusions to be used as guides in instructing the young of the present and next generation. Not only may juvenile sex delinquency show a marked decrease, but it is possible, the more numerous adult sex delinquents may show some beneficial effects.

I wish you a decisive victory and trust that this communication will be of some benefit towards the successful conclusion of your case.

Respectfully,

Abraham J. Rosenfeld

ABRAHAM J. ROSENFELD, M. D.

Defendants' Exhibit 16, Annexed to Foregoing Affidavit

UNIVERSITY OF CINCINNATI
Testing and Counseling Center
Cincinnati 21, Ohio

EVALUATION OF
THE HOUSEWIFE'S HANDBOOK ON SELECTIVE PROMISCUITY

1. Professional Background:

A. Degrees:

1. B.A. Degree, Boston University, 1953
Major: Psychology
Minors: Sociology, Philosophy
2. M.A. Degree, University of Maryland, 1956
Major: Counseling Psychology
Minor: Industrial Psychology
3. Ph.D. Degree, University of Maryland, 1957
Major: Counseling Psychology
Minor: Industrial Psychology

B. Certification and Professional Organizations:
Certified Psychologist, State of Maryland—Inactive
Status

Member—American Psychological Association
Member—Division 17, Counseling—A.P.A.
Member—Eastern Psychological Association
Member—Cincinnati Psychological Association
Member—Sigma Xi

C. Employment:

Pre-Ph.D.—Equivalent of two years full-time as a
trainee in Counseling Psychology with the Vet-
erans Administration Hospital, Perry Point,
Maryland

Duties: Vocational-Educational Counseling, Psycho-
therapy, Diagnostic Evaluation

Defendants' Exhibit 16

Post—Ph.D.—Two years—Clinical Psychologist, Veterans Administration, continuing above duties.
 Three and one-half years—Chief Counselor and Assistant Professor of Psychology, University of Cincinnati

Duties: Counseling and Psychotherapy with college students as well as occasional children and adults.

Teaching:

- a) "Counseling and Psychotherapy"—3½ years
- b) "Psychology of Personality"—1 semester
- c) "Introductory Psychology"—3½ years
- d) Practicum Supervision—2 years

2. As Drs. Ebehard and Phyllis Kronhausen state in their book "Pornography and the Law", it is difficult to describe in words the major differences between erotic realism and "hard core" pornography, yet when one sees them side by side, they are easily distinguishable. Choice of words, pictures, length of material, subject matter (e.g., perversion) are certainly not appropriate criteria. Nor is emotional response, since a prerequisite of normal sex is physical and emotional responsiveness. Intent is the most frequently applied legal criteria and, as I understand the Supreme Court's decision, a judgment must be made whether or not the book was intended solely as "dirt for dirt's sake" with no other purpose or value to society in mind. It is, of course, impossible to read the author's mind in this matter and each of us must set up some of our criteria. If it is important to society (a debatable point) that we eliminate books which are written for "dirt's sake", then we must do all possible to preserve those which are not so.

Defendants' Exhibit 16

As I read a book to make this judgment, I apply several mental criteria. 1) Did the author use a "four letter" word when a more acceptable word would have conveyed the four letter vernacular. For example, in Henry Miller's book "Tropic of Cancer" the word "vagina" could never communicate the contempt in which he held women as did the four letter vernacular. Also, the vernacular is the common, accepted vocabulary to many groups of people (which, unfortunately, includes many children since parents frequently refrain from teaching them proper terminology), and for an author to place more "high level words" in their mouths is unrealistic. So point one is "did the author have to use the word he did to convey his message?" 2) How lavishly does the author describe his sexual scenes? In "hard core" pornography the author typically goes into considerable minute detail in describing the performance of the characters. Many times the fantasy includes acts and actions which are physically and anatomically impossible. For example, impossible sexual positions, exaggerated sex organs or behavior of such organs, etc. To the educated, these actions lost their erotism by the very nature of their absurdity. 3) Every sexual performance brings supreme ecstasy, even to the victim who initially may show fear but is soon won over. Sex is good, but it is not always quite as good under all conditions as these authors would have us believe. 4) Is the book dull? Not very scientific, I'll admit, but frequently a very appropriate final criteria.

Again, I agree with Drs. Ebehard and Phyllis Kronhausen that "contemporary national standards" are so broad that they make a meaningless criterion. In my evaluation presented below, I shall be primarily concerned with whether or not the book is a) "dirt for dirt's sake"; b) consistent with my above criteria; and c) of any other value to society.

3. By either my above standards or the Supreme Court's decision, I cannot consider this book pornographic. In the

Defendants' Exhibit 16

first place, the author's use of the vernacular seems entirely appropriate and reflects the important point that children quite frequently have no other vocabulary with which to deal with such matters. In reflecting her chronological growth the author immediately changes over to more appropriate vocabulary with occasional, appropriate return to more common language. Second, her descriptions of her sexual experiences are presented in detail but are not embellished or exaggerated. Furthermore, the acts and actions, described are even more limited than one might find in the sex history of many normal couples.

On the third point, the author is quite emphatic several times in the course of the text that some sexual experiences have a minor effect on her or none at all. There appears to be no attempt to suggest all sex acts are the height of ecstasy.

4. I believe this book has two definite basic values to society. First of all, I feel it is a very valuable case history to the student of sex behavior and to the counselor or therapist that must deal with sexual problems of patients. Since a good number of my clients are young women, many in the throes of dealing with their sexual feelings, I had felt I did not have too much to learn in this area, but Mrs. Anthony's book proved me wrong as I'm sure it will many other "experts".

Secondly, I definitely feel this book would be useful in "bibliotherapy" with certain clients who were ready to deal with their feelings at this level. Because of the lack of communication about sexual experience among women, I am always amazed at how little they know of the normality or abnormality of their feelings in this area. Men are frequently more fortunate since their discussions are usually much freer. An example of much feminine "ignorance" would be the number of girls I have seen who are convinced they are the only females who have ever masturbated. Mrs.

Defendants' Exhibit 17

Anthony's book could help considerably to alleviate resulting feelings of guilt in such cases.

I trust this opinion will be of value to you in facing your indictment. To summarize my impression: Not Pornographic.

Richard P. Walsh
RICHARD P. WALSH, PH.D.
Chief Counselor and
Assistant Professor of
Psychology

Defendants' Exhibit 17, Annexed to Foregoing Affidavit

SAMUEL BARON, PH. D
310 West 86th Street
New York 24, N. Y.
ENDicott 2-2891

March 6, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

I am a clinical psychologist and psychoanalyst.

Mrs. Anthony's book is a forthright, ingenuous account of the sexual development of a woman who, from early childhood on, showed a remarkable need to be completely honest with herself. Parents and educators, in their attempts to teach facts about life, would do well to emulate the freedom from that usual shame-faced inhibition which tends only to an evasion or an obfuscation of issues.

It is precisely this shame-facedness that lays the basis for obscenity from which the book is singularly free. The

Defendants' Exhibit 18

author uses the vernacular obviously only because that was the actual language in which sex was introduced to her. The word "coitus" is no less obscene than its vernacular equivalent just because a Latin facade tries to hide its meaning.

One of the greatest values of the book lies precisely in this wholesome tearing down of all false facades, and thus helping to establish a freedom from the crippling, stultifying constrictions that only make for mental illness and neuroses.

Sincerely yours,

Samuel Baron
SAMUEL BARON

Defendants' Exhibit 18, Annexed to Foregoing Affidavit

UNIVERSITY OF ILLINOIS LIBRARY
Urbana, Illinois

March 5, 1963

Mr. Ralph Ginzburg
Editor & Publisher
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have just completed reading Rey Anthony's *The Housewife's Handbook on Selective Promiscuity*, published by Documentary Books, Inc. I understand that the book was issued several years ago, but it had not previously come to my attention.

This is a book that Dr. Alfred Kinsey, Havelock Ellis, and Sigmund Freud would have thoroughly appreciated and for which they would have been grateful. The tragedies and joys of being a woman have never been more honestly stated, in straightforward, unpretentious, yet appealing

Defendants' Exhibit 19

language. One can only feel deep sympathy for the heroine of this autobiography as she seeks to understand her own nature and personality, and searches for happiness for herself and others. In my view, the book would be an extremely valuable document for every woman to read, to give her a better understanding of her own psychological problems, and for every man—especially every husband—to give him a clearer insight into feminine mentality. I believe that it could do much to dispel ignorance, bring about better adjustment between the sexes, and reduce marital unhappiness.

With best wishes,

Sincerely yours,

R. B. Downs
Dean of Library
R. B. DOWNS
Administration

RBD:RD

Defendants' Exhibit 19, Annexed to Foregoing Affidavit

HARRY BENJAMIN, M.D.
New York and San Francisco

December 31, 1962

Office Address:
44 East 67th Street
New York 21, New York
REgent 7-0770

Mr. Ralph Ginzburg
% EROS
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

In connection with your publication of "The Housewife's Handbook of Promiscuity", I would like to say that

Defendants' Exhibit 20

I know this "confession" and consider it a most valuable contribution to the science of sexology. I have also found it useful in certain cases of marriage counselling and would certainly welcome its publication as a hard-cover book.

Trusting that you will be successful in your plans, I am

Sincerely yours,

Harry Benjamin

HARRY BENJAMIN, M. D.

HB/va

Defendants' Exhibit 20, Annexed to Foregoing Affidavit

OREGON STATE UNIVERSITY
Corvallis, Oregon
School of Home Economics

February 26, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have your letter regarding the question of whether *The Housewife's Handbook of Selective Promiscuity* should be considered hard-core pornography. Of course the spelling out of what constitutes "hard-core pornography" would be different as different persons define it. From my point of view, having seen at various times in the course of my professional career what I have considered "hard-core pornography," I do not consider *The Housewife's Handbook of Selective Promiscuity* as such.

The book had come to my attention before I heard from you and I had purchased a copy of it for use with some of

Defendants' Exhibit 20

my students as they developed in their concepts to the point where I thought they could use it. I have been using it on a selective basis for the past year or so. I make a point of selectivity for the inhibitions which surround sex in our culture are so great that a thoroughly professional and objective discussion of almost any sex topic is upsetting to certain persons. I likewise use clinical materials in this way. I prefer therefore to use a book like *The Housewife's Handbook of Selective Promiscuity* in a selective manner rather than as a document made available to anyone. I do expect to continue to use it in my work however.

Perhaps as good a way as any to express my view is that I gave *The Handbook* to my daughter and her husband to read. Their comment was that it was helpful to them, as it gave them new insights into the sexual feelings of women. I feel that this is a central feature of the book and I'm quite satisfied with the fact that they read it.

The author herself is evidently a psychologically confused and I feel an unstable woman, but this so far as the "pornography" issue is concerned is beside the point. In fact, the book can give discerning readers new insights into the way in which sex may be integrated into a normal mature life. I don't believe either male or female could read the book with any objectivity and fail to get a clearer insight into what is involved in mutuality in the sexual relationship.

The section on communication has tremendously valuable insights and is made much more meaningful by the portion of the book which precedes it.

The "hard-core pornography" approach which features exaggerated size of genital organs, incest situations, violations and seductions to the exclusion of any educational point to be made is not found in this book. I feel that the Kronhausen's in their book *Pornography and the Law* have done a good job distinguishing between what is "hard-core pornography" and what is not. I'd like to recommend the definition in the Kronhausen book to all interested persons.

Defendants' Exhibit 20

I feel that this book should not be banned from the mails. If it is, it extends the definition of pornography to the point where almost any autobiographical or clinical material could fall under the same ban.

My background includes a Ph.D. from Teachers College, Columbia and some 35 years during which I have been dealing with sex education matters, and sexual problems as an aspect of the counseling and advisory work I have done.

I am also the author of the following books in this field:

1. *Sex Adjustments of Young Men*—Harpers
1940
2. *Sex Education as Human Relations*—Inor
Publ. Co. 1950
3. *Premarital Intercourse and Interpersonal Relations*—Julian Press—1961.

I have also written the pamphlets, *Understanding Sex*, and *Understanding the Other Sex* for use in high schools, as well as a great many articles dealing with sexual matters. I also teach a seminar for graduate students entitled, "Psychosexual Development through the Family Cycle." I have also spoken frequently at such professional meetings as the Groves Conference on Marriage and the Family and the National Council on Family Relations. I was also one of the main speakers, talking on premarital sex standards at the North American Conference on Church and Family sponsored by the National Council of Churches in the U. S. A. and the Canadian Council of Churches in May, 1961.

Sincerely yours,

Lester A. Kirkendall
LESTER A. KIRKENDALL

LAK:ac

Defendants' Exhibit 21, Annexed to Foregoing Affidavit

W. A. BLACK, M. D.
916 5th Street — P. O. Box 390
Phone SHERWOOD 2-3247
Marysville, California

February 27, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

Thank you for sending me a copy of Rey Anthony's "THE HOUSEWIFE'S HANDBOOK ON SELECTIVE PROMISCUITY" for review and criticism. To begin with I think the title might better be "THE DIARY OF A NYMPHOMANIAC" or "REVELATIONS ON THE INTIMATE LIFE OF THE SEXUALLY IMPULSIVE AND UNRESTRAINED FEMALE."

This book presents a clear, candid, nonpornographic description of the unfoldment of sex activity in a rather uninhibited female. It is an excellent chronicle, intelligently written, and shows remarkable logic and scientific knowledge of the subject of SEX. In my opinion it should be a most valuable book for students of sociology. It vividly presents a reliable picture of sex expression in the aggressive, highly sexed type of woman when freed from the restraint of our social mores and taboos. As such I consider this book to be very valuable in its being reliably descriptive of a definite type of womanhood.

As a physician I find it most important to understand the basic pattern of people to properly treat their frustration produced neuroses. This book very cleverly presents such a pattern in its natural uninhibited expression. Further, the discussions given enable one to better approach the building of rapport.

Defendants' Exhibit 21

Insofar as pornography or obscenity are concerned I find that this treatise contains no element of these. It is an honest and frank narration of the life of a real person which may be expressive of the lives and thoughts of many women of this type. But before completely clearing it of any stigma of pornography I think it well to define what is meant by PORNOGRAPHY. At the outset I do not know what is meant by "hard-core" pornography other than just pornography. In my thinking the word pornography refers to the crude burlesquing of sexual activities and thought. I find none of this in this book. Rather, it brings to light in easily understood lay language many marital problems the solution of which is very important for domestic tranquility and marital understanding.

By way of supporting my right to comment as a physician I give the following synopsis of my training and experience. By profession I am a physician doing a general medical practice including obstetrics and surgery along with being a medical director for a large international corporation. I hold the degrees of AB (physics), MA (zoology), and a certificate of completion in education from the University of California in Berkeley. My M. D. was conferred by Washington University School of Medicine in St. Louis. I have also taken graduate work in the University of Southern California Graduate School of Medicine and in several European hospitals. I taught in the city school systems of both Los Angeles and San Francisco, served with the U. S. A. A. F. during World War II and headed a school for the 4AF, and worked for 20 years as a physician in 3 continents—Asia, Europe, and No. America. I have practiced in my present locality for the past 6 years, am a member of the local Methodist Church serving part of the time on its official board and have acted as leader for a youth discussion group. Further, I am the son of a Methodist minister and as such have long been interested in moral issues.

Defendants' Exhibit 22

In conclusion I wish to emphasize that this book is not pornographic, but it is rather a scholastic treatise on sex activity and philosophy. In style it is refreshingly frank without being smutty. It contains much constructive information, is technically correct, and offers a good study of the thoughts and behavior of a definite type of womanhood which appears in significant numbers. I recommend it as required reading for sociology, psychology, and divinity students, and also for study by married couples. I find no obscenity in the way the author has expressed this work, hence I can not understand why you or anyone else should be indicted for mailing this book.

Sincerely,

W. A. Black, M. D.

W. A. BLACK, M. D.

Defendants' Exhibit 22, Annexed to Foregoing Affidavit

WHITTIER COLLEGE
Whittier, California

Telephone Oxbow 3 - 0771

February 28, 1963

Mr. Ralph Ginzberg, Editor and Publisher
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I am pleased for the opportunity to respond to your request for an evaluation of *The Housewife's Handbook on Selective Promiscuity*. I am Associate Professor of Psychology here at Whittier College. I have a Ph.D degree in psychology from the University of Nebraska. I believe

Defendants' Exhibit 22

I reflect the opinion of many psychologists in matters related to pornography. Totally apart from freedom of the press, I am of the opinion that documentation of experiences and/or feelings related to sexual motivation has value both for clinical purposes and for an informed public. It is in this sense I feel qualified to speak rather than in the sense of artistic merit or literary achievement.

I do not believe that the *Handbook* qualifies as "hard-core pornography." It seems quite apparent to me that it's author did not write with the purpose of stimulating sexual interests. While I do not believe that the details of sexual experience can be considered typical of current standards of behavior as regards sexual morality, the book certainly does not represent values which are contrary to those contained in popular literature. Other examples of contemporary literature, widely available and therefore a part of mass communication media, are in my opinion closer to "hard-core pornography" in the sense that they serve to excite sexual interest (often by omission of details).

My concept of pornography is implicit in the above remarks. To make it more explicit, I would say that "hard-core" may be understood to mean a presentation of sexual materials in such a manner that they seek to excite sexual motivations rather than inform. Further these materials contain both in written and pictorial form, direct demonstrations of sexual acts which are contrary to contemporary moral code.

The *Handbook* according to my reading, presents sexual experiences which are often difficult to document because women find it offensive to discuss such experiences "in public." It therefore makes available in a way which is not true of other clinical or medical literature, reactions which contribute to our understanding of sexual motivation. These details of feeling are directly accessible to the public and can provide in private reading much would is

Defendants' Exhibit 23

hard to communicate in public conversation, even in a specifically clinical setting.

Sincerely,

Eugene E. Gloye
EUGENE E. GLOYE

Defendants' Exhibit 23, Annexed to Foregoing Affidavit

(Letterhead of)

State of California
Department of Mental Hygiene
METROPOLITAN STATE HOSPITAL
11400 Norwalk Blvd.
Norwalk, California

Psychology Department
February 28, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I am happy to reply to your request for an evaluation of the book "*The Housewife's Handbook on Selective Promiscuity*," by Mrs. Rey Anthony. I read the book in one sitting and found it exceedingly interesting.

The following is the data that you wanted concerning me and my evaluation of the book:

(1) I have a Bachelor's Degree in history from UCLA and an MA and Ph.D. in psychology from UCLA. I am a member of the American Psychological Association, the California State Psychological Association, Phi Delta

Defendants' Exhibit 23

Kappa (the National Professional Fraternity in Education), and I am a very active member in a local Unitarian Society and am also active in the Pacific Southwest District of the Unitarian Universalist Association; and have given talks before several Unitarian Universalist churches and/or fellowships in this area. On occasion I also speak before PTA's and other community organizations. I am employed as a Clinical Psychologist at Metropolitan State Hospital, Norwalk, California. Also, I have at times been an evening instructor in Psychology at East Los Angeles College.

(2) I find it very hard to answer the question of what by "contemporary national standards constitutes hard core pornography." Some possibilities present themselves:

(a) I have read some material in which obviously the author felt that sex was dirty and was trying to be very sexual, but I have also read material in which the person thought that sex was dirty and condemned it. I suppose both of these might be thought of as pornographic. I find the latter more objectionable than the former. For example, I have a book in my office called *The Way of God in Marriage* written by a Mrs. Mary E. Teats, who calls herself the "National Purity Evangelist of the Women's Christian Temperance Union and lecturer for the National Purity Association." This book was written in 1906 and is quite anti-sex, regarding it as dirty. If you want to call any book pornographic I would call this one that, because its effect on the sex lives of any who would be guided by it would be very deleterious. So, if we want to call any book which regards sex with guilt as being pornographic this is a possibility. However, I think we would have to be thorough-going with this definition.

Defendants' Exhibit 23

(b) Another possible definition would be one which regards sex as something totally apart from interpersonal relations and which describes sexual relations explicitly. If this is hard-core pornography then, I suppose, many sex manuals might be considered in the same category.

(c) I suppose what people are actually trying to do is to make sure that people, especially young people, don't find out that sex purely and simply can be a lot of fun and very enjoyable. I suppose if you wrote about a relationship in which the sensuous elements were described in considerable detail, and you took pains to say that the two people involved were legally married, that this would be objected to in the way of being pornographic.

I don't believe this handbook is hard-core pornography by any of the measures that I have mentioned above, except that it does imply that sex can be fun. It also, incidentally, demonstrates that under some circumstances it can be very much not fun. I think I can elucidate on this more fully below.

(3) The Value to Society of this Book. I consider the book the "*Housewife's Handbook of Selective Promiscuity*" exceedingly valuable to society. As a matter of fact, I would think that its impact might well be epic-making on our thinking. What Mrs. Rey has described is simply the sex life of a woman, along with those other parts of her living experiences which have contributed substantially to this. It is one segment of living, a major strand in the fabric of a life. To this is added in the second portion statements of her own philosophy. I regard this as socially valuable from two aspects:

First, from the point of view of its actual usefulness to professional and non-professional people. I, myself, am

Defendants' Exhibit 23

a psychologist who works almost exclusively with women. I am assigned to wards in which I conduct group therapy, give mental health lectures, and in other ways work with women who are in various stages of remission from mental illness. I deal with women who may be married or unmarried, divorced, separated, etc., and to many of them sexual matters are often of great importance, as ongoing adjustments which they must make to men with whom they relate, as they play their part as mothers of children, and as persons whose mental illness has been contributed to by sexual attitudes and sexual behavior which was part of their growing-up experiences. I have found this book exceedingly helpful to me (and this is after one reading without further mulling over and application of the book to my own experience in teaching and as a therapist), in gaining a greater understanding generally of female sexuality. Mrs. Anthony portrays in a way I have not seen portrayed before, the feelings, emotions and needs of a woman in the sexual sphere. This book has helped me to appreciate considerably more than I had before appreciated what the sexual aspirations of a woman may be. In a very real sense one of the most important features of this woman's story is her failure to achieve a long lasting, economically sound, and satisfying interpersonal and sexual relationship with a male, in spite of many attempts.

The folklore would have us believe that women, following marriage, achieve satisfactory communion with their mates, including regular, frequent and satisfying sexual intercourse in the traditional position, with simultaneous orgasms; and that this continues throughout marriage. Those of us who work with people's problems and even those of us who do not, but have spoken frankly with our friends about such matters, recognize that the picture the folklore presents is nonsense and tragic nonsense at that. I am sure that failure to achieve the ideal relationship is far more often the rule than the exception, and that Mrs.

Defendants' Exhibit 23

Anthony is not a particularly deviant individual, but a relatively normal woman as women (and men for that matter) go in our culture. She is, in fact, possibly healthier than some because she refuses a life that is merely half living, and instead of "adjusting" her life to a bad relationship, insists that she as a person is entitled to sexual fulfillment.

Mrs. Anthony shows in her book the contribution of many, many factors to the satisfyingness or lack of satisfyingness of a sexual experience. She shows how economic factors, the presence of children and their activities, pregnancy, the tensions surrounding it and the fear of it, contribute to or detract from happy sexual relations. She shows how the exigencies of the marriage relationship may affect the quality of a sexual relationship. She shows how her own attitudes affect her sexual fulfillment. Most of all, however, she shows the very crucial influence of masculine attitudes and behavior upon the sexual fulfillment of a woman.

I do not mean to say that I was unaware of these matters before, but the book has given me a renewed appreciation of the woman's part in them. It has also brought to light the fact that I had suspected, but never fully appreciated, which is that the female remains a sexual being in spite of rebuffs and unsatisfactory situations and lack of fulfillment of her sexuality; and, if given a chance, will continue to strive for fulfillment.

The importance of the clitoris in the female sexual experience is stressed; I feel this book is part of a continuing debate among sexologists, male and female, as to what parts of the female anatomy are the source of female sexual satisfaction, and under what circumstances—a debate, which, in my opinion, may have the outcome of helping women in general achieve greater sexual fulfillment.

In the second place, I see this book as being socially valuable because it contains an enormous and very pro-

Defendants' Exhibit 23

found social message. There are, in fact, two messages interwoven.

The first message is that if we are ever to make progress in sexuality, sex must be talked about explicitly and in detail, including feelings and sensations which are part of the experience. It is apparent from the experiences Mrs. Rey relates and puts into this book that much of the difficulty she encountered was a result simply of people not knowing about sex and therefore of their operating on prejudices, because sex and sexual experiences had not been talked about. A major burden of this work is that sexual experiences can and ought to be talked about, and talked about, as well as written about in whatever language one chooses, and however one wishes to express it. Patently, this is the only way that we can bring sex out into the open and make it a socially useful part of our human experience.

The second message is essentially a plea for society's tolerance of variations and experimentation in the realm of sexuality. Mrs. Rey is saying that if we are ever to discover what sexual fulfillment means, we must rid ourselves of the prejudice that there is one particular conventionalized way of carrying on sexual relations, and that anything else is evil. Mrs. Rey rightfully and realistically indicates that such experimentations are not necessarily always fulfilling, but she does make a strong argument for the concept that there must be tolerance for doing things in somewhat different ways outside of the conventional framework if we are ever to solve the enormous sexual problems to which our society is heir, and discover what is best in the long run for people. Inasmuch as we are already engaged on every hand in all kinds of interpersonal experimentations, including the sexual—whether legally or illegally—I would strongly support Mrs. Rey's implicit doctrine and suggest that we ought to recognize

Defendants' Exhibit 23

that the last thing has not been said about sexuality and that much more needs to be done and thought about and talked about concerning sexual functions and sexual needs.

I see that Mrs. Rey may be, especially if she identifies herself and desires it, a part of a crusade in a tradition of Susan B. Anthony, Margaret Sanger, and many other women in the past who are involved in a cause related to the welfare of her sex. This time the cause would be that of a sane view of sex and the toleration of an honest and open approach to it, a cause which I for one would firmly support.

In short, I find Mrs. Rey's book an extremely valuable book. I should like to recommend it, for example, to the people in my church to read, especially those who are having marital difficulties, in order to increase their tolerance and understanding for one another. Much of the book, I should think, would be very suitable reading, for teen age people, especially teen age young women who could empathize strongly with the growing up period that Mrs. Rey relates, and could read on and be disabused of some of the unrealistic notions about marriage and sexual experiences. I should think this would make very good reading for the average man to help him gain a better appreciation of female sexuality.

I hope, Mr. Ginzburg, that I will not need to be called upon again to comment upon a book for the purpose for which you are asking these remarks, although I am perfectly willing to do so. If what I have written or material like it is used in court, then I object in principle to what is implied by this, although under the circumstances you may use what I write, of course. In a sense, I am being part of a large board of censors who are attempting to determine what people may or may not read. Even if the book under discussion were thoroughly pornographic—by whatever definition you want to use—I think people should be allowed to read it; nobody, in my opinion, should have

Defendants' Exhibit 24

a right to be a censor over the minds of men. Anything else makes a mockery of freedom of speech and press—one of our most fundamental liberties.

Sincerely yours,

Jesse H. Harvey
JESSE H. HARVEY, Ph. D.
Clinical Psychologist

Defendants' Exhibit 24, Annexed to Foregoing Affidavit

UNIVERSITY OF ARKANSAS
Medical Center
Little Rock
Department of Psychiatry

March 5, 1963

Mr. Ralph Ginzberg
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzberg:

I reply to your request for a statement regarding Rey Anthony's "The Housewives Handbook on Selective Promiscuity".

1. Academic degrees and professional attainments.
B.S. degree from George Washington University; M. A. and Ph. D. degrees in Clinical Psychology from The Catholic University of America, Washington, D. C. Twelve years experience in clinical psychology, presently Associate Professor and Senior Clinical Psychologist, The University of Arkansas Medical Center, Little Rock, Ark. (For additional data see "American Men of Science" and "Who's Who in the Southwest".)

Defendants' Exhibit 24

2. What constitutes "hard-core pornography" by contemporary national standards?

If we could define what is meant by "contemporary national standards", we could answer the question. But the phrase cannot be defined. It cannot be defined simply because it refers to an agglomerate. The American population is divided into many publics, each with its own characteristic attitudes and values, hence each with its own standards. For example, there is a male public and a female public; a Democratic public and a Republican public; a Protestant public, a Catholic public, and a Jewish public; there is a public of persons who have only a grammar school education, a public of college graduates, and a public of professional school graduates; there is a public of children, a public of teen-agers, and a public of adults; there is a public of voters and a public of non-voters. The standards for each of these publics are their own, with little overlap among them. Thus it is impossible to arrive at any definition of a composite set of standards. It is like being shown a barrel of oranges, apples, lemons and bananas and then being asked the question, "What is the common fruit in this barrel at the present time?" This question cannot be answered; it is illogical.

3. Is the "Handbook" hard-core pornography?

If we distinguish hard-core pornography from sexual realism, the Handbook is not hard-core pornography. It is sexual realism. Personal documents that are authentic and honest have always been accepted in law and in the social sciences as basic realities. If the "Handbook" meets the requirements of authenticity and honesty then it must be accepted as realistic, even sexually realistic. In my opinion it is exactly that, a sexually realistic personal document.

Defendants' Exhibit 25

4. Does the book have social values for society?

Unless we assume that ignorance is bliss, any contribution to knowledge has positive values for society. Our democracy is founded on the premise of an educated and informal citizenry. Ignorance retards the effectiveness of our democracy and hinders the development of the social institutions that are designed to serve it, e. g. elections, marriage, the law. There is much ignorance about actual sexual behavior in this country, particularly about the actual sexual-psychological experiences of girls and women. This book dispels a part of that ignorance, hence has positive value for our democratic society which has always placed a high premium on truth.

I wish you well on the outcome of the pending trial against you and the Handbook.

Sincerely,

S. J. Fields, Ph. D.
SIDNEY J. FIELDS, Ph. D.
Associate Professor and
Senior Clinical Psychologist.

SJF/cab

Defendants' Exhibit 25, Annexed to Foregoing Affidavit

ROGER J. CALLAHAN, Ph. D.
17000 West Eight Mile Road
Southfield, Michigan

January 31, 1963

Mr. Ralph Ginzburg
Documentary Books
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

Dr. Albert Ellis, of New York, informs me that you have been indicted for publishing "The Housewife's Handbook".

Defendants' Exhibit 26

I am very sorry to hear about this because the book impressed me as being non-obscene and a valuable contribution to the literature. The book does a lot to correct a good many superstitions about sex and also offers a valuable case history.

I certainly hope you will be able to continue to distribute this fine book.

With all good wishes, I remain

Sincerely yours,

Roger J. Callahan

ROGER J. CALLAHAN, Ph. D.

RJC/Ira

Defendants' Exhibit 26, Annexed to Foregoing Affidavit

HAROLD H. SAXTON, M. D.

Mayville, New York

February 15, 1963

Mr. Ralph Ginzburg
Documentary Books, Inc.
110 West 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg,

I have been a practicing physician in a village and rural area for 31 years. I received my degree of M. D. in 1930 from the University of Buffalo Medical School. I have been a General Practitioner.

My definition of pornography is: any publication or material, verbal or pictorial, intended to arouse sexual desire. What, you may ask, is wrong with that? The future of the human race depends entirely on the fact that people have sexual intercourse, resulting in pregnancies

Defendants' Exhibit 26

and babies. Any antipornography should be the greatest crime in history, because it would tend to diminish the chance of the survival of our species. Have you heard of the Shakers?

I have read "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony. This little book is Not pornography. I read the book with sympathy for the author. She has had a difficult task to establish her sexual position in society, but she did not arouse any feelings in me that I had not experienced before. I sympathized with her problems and difficulties, and hoped that she would eventually come out all right. The book did Not appear to me to be pornographic.

For many generations we have suffered from a false attitude toward the sex relations. Not too many generations ago, the only forbidden material was anti-government. No one could attack the idea that government was ordained by God. In 1500 sexual affairs were discussed openly and honestly. Are we honest today?

I feel that the book mentioned above is a valuable addition to our scanty knowledge of sex. I am certain that it should be REQUIRED READING for all people applying for marriage licenses.

Yours truly,

HAROLD H. SAXTON, M. D.

Defendants' Exhibit 27, Annexed to Foregoing Affidavit

(Letterhead of)

SANTA MONICA CITY COLLEGE
Santa Monica Unified School District

March 4, 1963

Mr. Ralph Ginzberg
Editor & Publisher
110 West 40th Street
New York 18, New York.

Dear Sir:

I am glad to respond to your request for supporting information in the evaluation of The Handbook for I feel that it is unfortunate that the American public should be treated as a massive case of arrested development, perhaps at the fifteen-year level, in need of paternal supervision of all its reading.

B. S. degree, University of Washington, major in psychology.

Two years on PhD program at University of California, Berkeley, ended by draft in 1942.

Psychologist in U. S. Army Air Forces.

Chief psychologist for Guidance Service of Los Angeles Board of Education.

Instructor in psychology and counselor at Santa Monica City College for last sixteen years.

Certified psychologist, State of California.

Member of:

California State Psychological Association.

American Psychological Association.

American Personnel and Guidance Association.

Phi Delta Kappa, etc.

Defendants' Exhibit 27

2. Pornography is indeed a difficult subject to deal with, so difficult that anybody who sets forth arbitrary lines is brave to the point of foolhardiness.

From the view of the consumer, anything can be pornographic and is if it symbolically excites sexual feelings and motives. In the extreme, this is called fetishism when normally neutral objects take on sexual significance through the learning history of the individual. Thus, from this angle, pornography is entirely relative to the person and his learned associations. To remove this pornography is to remove most of the environment.

From the view of the producer, material that is designed to be salacious, intended to excite the sexual feelings and motives is pornographic. Thus the deciding factor is the purpose of the producer. Since anything can be pornographic to those who take it so there is no absolute criterion of the material itself. Thus a decision might be based primarily on the purpose of the producer, but secondarily on the success in carrying out the purpose. If, in fact, such an effort is unsuccessful we may decide that the producer is morally reprehensible, but not criminally liable. We may criticize the murderous thought, but we cannot prosecute the murderer unless the thought is successfully realized.

"Hard-core pornography" then is material that successfully carries out the intentions of the producer to excite sexual feelings and motives.

3. The Handbook does not, in my opinion, fit this category. It is instead the description of the honest anguish of a woman groping for sexual fulfillment in a society that has not solved the conflict between biological drives and social values. It is unusually candid writing, but it is not couched in the lurid expressions replete in some other publications. The title is questionable and if it was picked to add sales appeal, then it might be considered

Defendants' Exhibit 27

offensive. However, it is a mistitle and literature about the book should make this clear.

4. In general, the failure of our society to solve these basic adjustment problems is in part due to the lack of information about the specific nature and extent of the problems, and about the practical day-to-day efforts that people make to solve them in their personal lives. We have been blinded by another aspect of cultural lag and the persistent conservatism of vested interests. The Kinsey reports pioneered an effort to provide more background information, but their faults need correction by accumulation of data from such records as the Handbook.

Also, the college counselor faces many occurrences of these adjustment problems and needs means to provide reduction of anxiety and guilt feelings, improvement of perspective on problem situations, and vocabulary for catharsis. The Handbook is a help in these ways. Wherever bibliotherapy is of value in improving mature sexual adjustment, The Handbook is useful.

Hoping this note is appropriate, I remain,

Sincerely yours,

Glenn C. Martin
GLENN C. MARTIN

GCM/s

Defendants' Exhibit 28, Annexed to Foregoing Affidavit

DARTMOUTH COLLEGE
Baker Library
Hanover, New Hampshire

7 March 1963

Dear Mr. Ginzburg:

Thank you for sending a copy of *The Housewife's Handbook on Selective Promiscuity* by Rey Anthony. This has been added to the library collections of the College.

You ask my comments about the book in connection with the action which has been instituted by the Post Office Department. While I am not a sociologist nor a psychiatrist nor any other kind of expert on human relations I find no difficulty in accepting the views of such experts as Drs. Bryan and Frumkin that this particular work has authenticity and importance in explaining behavior, and in making a serious contribution to the study of the psychology of sex. In consequence, to exclude this book from the U. S. mails would in my opinion be unjustifiable.

Under "the contemporary national standards" test which the U. S. Supreme Court has laid down, this would seem a clear case for the defense. Certainly it would seem an *a fortiori* case in jurisdictions which have cleared Henry Miller's *Tropic of Cancer*.

Sincerely,

RICHARD W. MORIN

Mr. Ralph Ginzburg
Eros Magazine, Inc.
111 West 40th Street
New York 18, New York
RWM/cp

Defendants' Exhibit 29, Annexed to Foregoing Affidavit

PERRY LANE, NYACK, NEW YORK

March 3, 1963

My dear Ralph Ginzburg:

"The Housewife's Handbook on Selective Promiscuity" is no more pornographic than the average Cook Book with recipes for omelettes, desserts, etc.

Good luck,

BEN HECHT

Defendants' Exhibit 30, Annexed to Foregoing Affidavit

MAXWELL GEISMAR
Winfield Avenue
Harrison, N. Y.

Feb. 23rd, 1963

Dear Mr. Ginzburg:

I am glad to make a statement about The Housewife's Handbook of Selective Promiscuity—and I think the title is the most misleading thing about the book.

I do not believe this could possibly fall under the heading of "hard-core pornography"—this book I mean—nor is it in my professional opinion a book that falls into the category of pornography at all.

It is in fact a remarkable case-history in psychological terms that one could find in any number of scientific or psychological books being published today, or in Kinsey's monumental study of American sexual behavior. The only difference is that it is told in the first person, and that the author does use the common sexual terms, rather than the more elevated scientific terms, in describing her experiences.

I believe in fact that a score of popular novels being published every day in the year are far more "porno-

Defendants' Exhibit 30

graphic" in intent than this book under question here. It is not possibly pornographic because it is filled with realism, with pain and with disappointment—which you do not find in erotic fantasies—with wisdom and with common sense. The writer is an unusual woman, to be sure, and oddly enough one finishes the book with a great deal of respect for her personality, and for the fact that she honestly believes in her thesis of complete sexual equality, and sexual freedom; and that she is full of scorn, and sometimes humor, at the prevailing hypocrisy of American sexual mores which does often allow everything she is talking about, but never dares to acknowledge it. I think this is an unusual book which in many ways is far superior in its descriptions of sexual experience to the so-called "marriage manuals" which we entrust to our children, but which often succeed only in making sexual love so "scientific" as to be abstract and meaningless.

Now you can use all or part of this statement, which I am glad to give you, for the sake of a free press and free thought in these United States, which also implies the freedom to discuss sexuality and sexual love as one of the basic drives in human nature.

I would like to state also that I am making this professional opinion without remuneration, or the thought of remuneration—that is, I am not being, nor do I wish to be considered as, a paid witness in any way.

I believe my qualifications for such a judgment are fairly well known in the literary field. I am a critic of reputation in this area, and a historian of the American novel during the last hundred years. I have published four books on this theme: *Writers in Crisis*, *Last of the Provincials*, *Rebels and Ancestors*, and *American Moderns*—all of them standard works which are used in most colleges and universities, which are known abroad, and are presently being translated in Italy as a standard history of the American novel.

Defendants' Exhibit 31

I have edited a score of other books by American authors, including the Pocketbook Walt Whitman Reader, the Scribner Ring Lardner Reader, just currently, The Viking Portable Thomas Wolfe, and the American Century Sherwood Anderson: Short Stories, etc. I have contributed to most of the current newspapers and magazines, including the New York Times, Herald Tribune, Saturday Review, the Atlantic Monthly, etc. I have a Columbia College BA, 1931, Columbia University MA, 1932; and have been a Teaching Fellow at Harvard, a Guggenheim Fellow, and my books have won an award from the National Academy of Arts & Sciences.

Sincerely,

Maxwell Geismar
MAXWELL GEISMAR

Defendants' Exhibit 31, Annexed to Foregoing Affidavit

ELMO ROPER AND ASSOCIATES
Time & Life Building
111 West 50th Street
New York 20, N. Y.
PLaza 7-4900

March 19, 1963

Mr. Ralph Ginzburg
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I don't know that a letter from me will be of any value to you whatsoever because, in my opinion, I have no qualifications as a judge of pornography. At the same time, however, I must add that I do not know what would constitute qualifications for a judge of pornography.

Defendants' Exhibit 32

In any event, however, I do not believe "Housewife's Handbook on Selective Promiscuity" qualifies under what I would call pornography.

I think the book is quite boringly written, and I doubt if it will do society either any good or any harm. It has a ring of authenticity, however, which makes me believe that it is exactly what it says it is—a book written by a woman describing—in terms not usually employed—her sexual experiences from a very early age to adulthood.

I can see how the book might conceivably do a small amount of good if it fell into the hands of just the right type of woman, and I don't see how it would be apt to do anyone any harm.

Sincerely yours,

Elmo Roper

ELMO ROPER

ER:bf

Defendants' Exhibit 32, Annexed to Foregoing Affidavit

March 15, 1963

TO WHOM IT MAY CONCERN:

I am a psychiatrist, married and the father of two children. In my 15 years of medical practice, I have worked in psychiatric institutions, out-patient and after-care clinics and private practice. I am certified by the American Boards of Psychiatry for the specialty practice of psychiatry and am a member of the American Psychiatric Association.

Having just carefully read the book "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony, I wish to state that, in my opinion, this book contains no material that could be considered to be "Hard-core promiscuity." It is my understanding that, by contemporary national standards, hard-core pornography consists of written or pictorial material which is designed to stimulate

Defendants' Exhibit 33

sexual imagery or emotions as its primary objective. This book represents an honest, introspective and searching effort of the author to portray her life experiences, particularly in the erotic sphere, as a clinical contribution to the understanding of feminine psychology. As such it is of the utmost necessity that the language utilized by in keeping with the socio-cultural level of the writer, rather than permit obscuring of the presentation through pretentious or artful distortion of language. Words of themselves do not constitute pornography, but rather the way and the intent with which they are used.

Based upon the above criteria, this book is not pornographic. On the contrary, it is a contribution to psychology, and should be of value to some therapists dealing with people with sexual difficulties. It might also be of some help to numerous individuals of both sexes who might be seeking further understanding of the feminine nature.

In my opinion, persons seeking stimulation of sexual fantasies would have little interest in this book.

DEAN R. ARCHER, M. D.
Imola, California

Defendants' Exhibit 33, Annexed to Foregoing Affidavit

Salt Lake City, Utah
March 7, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have just finished reading with interest your *The Housewife's Handbook on Selective Promiscuity*.

I have worked as a clinical psychologist for eighteen years and have had occasion to read at least parts of many

Defendants' Exhibit 33

papers and books on sex. This particular book certainly seems less erotic and pornographic than most, if it could be declared so at all. College boys sometimes obtain and lend sex literature to co-eds as part of a seduction process. If this book were so used, it would probably interfere with attaining the objective. It reads like a straightforward account and without the erotically intended embellishments found in many documents.

However, I am sure that the book could serve an erotic purpose to the very occasional person, just as a certain specific hair style or voice sound or kind of shoes worn can sexually arouse the occasionally bizarre person. Just because the "Handbook" might have been found to appeal to some as erotic or pornographic and that, therefore, it should be banned, would be comparable in my opinion to banning pictures of black mares because such had been found to erotically arouse some person or two.

Pornographic material is mildly annoying to me, but I do not see why such should be denied to those who like it. So, even if your book might be reacted to as pornographic or erotic by some rare persons, why should they be denied their little pleasures?

It would seem that most relatively uninformed persons reading the book might become less pre-occupied with eroticism as a result—as common exposure to nakedness in a culture where it is permitted renders the sight of the female body less sexually provocative, than would be the same body when draped.

If at the end of the book there were a statement to the effect that the author had been a wicked woman who had met punishment through poetic justice (like in some books and movies), perhaps the book would then be justified in the eyes of those who now condemn it.

Very truly yours,

H. B. Hovey

HENRY B. HOVEY, Ph. D.

Defendants' Exhibit 34, Annexed to Foregoing Affidavit

GEORGE J. WITTENSTEIN, M. D.
Thoracic and General Surgery
2324 Bath Street
Santa Barbara, California
Woodland 5-3016 or 5-3017

March 5, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.


Dear Mr. Ginzburg:

In response to your request I am happy to tell you that I have read Mrs. Anthony's "The Housewife's Handbook on Selective Promiscuity" with great interest. I have been a physician for 19 years, have several graduate and postgraduate degrees and am author of 22 medical papers. In my opinion this "Handbook" is not only not pornographic, but a very frank and candid description of the mental, sexual and ethical development of an individual for whom I can have only the highest respect. I would have no hesitation in recommending this book to young couples seeking premarital advice.

I sincerely hope that you will be successful in defending your cause.

Truly yours,

G. J. Wittenstein
GEORGE J. WITTENSTEIN, M. D.



Defendants' Exhibit 35, Annexed to Foregoing Affidavit

13 Highgate Westhill
London N. 6

Re.: Rey Anthony's "A Housewife's Handbook on Selective Promiscuity."

We have found Rey Anthony's book a deeply moving human document; not a particularly cheerful one; and certainly a great disappointment to those who may approach it hoping to find it a licentious one. But it is so obviously and utterly sincere that for this alone it is a sort of classic even among autobiographies.

Its special value lies, as far as we are concerned, in precisely this quality of absolute honesty which pervades every page of the little book. But it has other merits as well: one is that it constitutes one of the very rare autobiographies which are factual and truthful about the generally hushed-up area of sexual development and experience. Add to this that the book is written by a woman which makes it even still rarer and more valuable in this respect. And this scientific significance of the book is still further manifested immensely by the fact that its woman author does not so much relate sexual experiences as such, but within the framework of the accompanying psychological emotions and physical sensations which she as a woman underwent in the course of these—in and by themselves common and trite enough—events.

From this point of view we can only compare Rey Anthony's book with the very few (and for the most part unpublished) autobiographical works of women which have come to our attention in the course of research. In fact, what struck us the most about Rey Anthony's book was the astonishing degree of similarity with that material and its inner consistency with the case history material in our files relating to the sexual response of women. All of this

Defendants' Exhibit 35

tends, of course, to confirm the truthfulness and scientific reliability of Rey Anthony's account.

As to the problem whether we would consider Rey Anthony's book "pornographic", one can only be amazed that such a question could even seriously be raised about a work of this kind. The "Housewife's Handbook * * *"—and here we believe to be somewhat expert in our opinion—has absolutely *none* of the characteristics of "hard-core pornography"; as previously indicated, we do not even find it particularly "erotic" or "stimulating", even in those parts which deal more specifically with sexual experience. Perhaps this is so because in reading the book one becomes far too involved in the intense human drama behind the sexual events; or it is because of the almost scientific "objectivity" with which the author talks about her sexual experiences, or yet because of a certain moral decorum, so typically feminine, with which she relates them. At any rate, we can see nothing pornographic, obscene, or indecent about Rey Anthony's book.

As to the question whether Rey Anthony's book is within "contemporary community standards", we would say that the work nowhere exceeds them or offends the good taste or esthetic sensibility of any reasonable person. Much of contemporary fiction is much more detailed and certainly erotically more provocative than this—one is tempted to say—harmless and innocent, though honest, autobiography. Even some of the current "Marriage Manuals" are more specific in clinical description and more "daring" in many respects than Rey Anthony's book.

Defendants' Exhibit 36

As psychologists we would recommend the book unhesitatingly to adults and selectively even to adolescents for its inherent therapeutic and educational value.

Phyllis C. Kronhausen
PHYLLIS C. KRONHAUSEN, Ed. D.

Eberhard W. Kronhausen
EBERHARD W. KRONHAUSEN, Ed. D.

Qualifications:

Members: American Psychological Association; Certified Clinical Psychologists, New York State and California State; Specialists in Marriage and Family Life Education, Teachers College, Columbia University; etc.

Defendants' Exhibit 36, Annexed to Foregoing Affidavit

LAURENCE S. BAKER, PH. D.
62 Waller Avenue
White Plains, New York
WHITE PLAINS 9-8256

Profession: Clinical Psychologist.

Education: Ph. D. degree in clinical psychology.

Present positions: Private practice, White Plains, working with children, adolescents and adults; psychotherapy and psychological testing; public speaking. Consultant to several schools.

Associate in Psychology, Intertecna-Interdiscipline in Technology.

Staff Psychologist, Jennie Clarkson Home for Girls.

Defendants' Exhibit 36

Professional organizations:

American Psychological Association, member.
 New York State Psychological Association, member
 Clinical Division, member.
 Directory Committee, chairman.
 Committee on Relations with Community Mental Health
 Boards, member.
 Westchester County Psychological Association, member.
 Chairman, Westchester Center for Psychological Educa-
 tion (Low Cost Services).
 President-Elect.
 Member, Executive Board.
 Former Chairman, Education Committee.
 Former Chairman, Professional Services Committee.
 New York Society of Clinical Psychologists, member.
 Nassau County Psychological Association, founding
 member.
 Kappa Delta Pi, member.
 Phi Delta Kappa, member.
 New York Academy of Sciences, formerly member.

March 5, 1963

Mr. Ralph Ginzburg
 Documentary Books, Inc.
 110 West 40th Street
 New York 18, N. Y.

Dear Mr. Ginzburg:

I am happy to supply you with a letter giving my
 opinions about the book "The Housewife's Handbook on
 Selective Promiscuity" as you requested. As you know,

Defendants' Exhibit 36

I have already written to the Post Office Department, the American Civil Liberties Union, and Senator Jacob Javits, commenting upon the banning of this book from the mails, prior to receiving your request.

As I understand the term "hard-core pornography", it refers to writings the *sole* purpose of which is to arouse sexual responses in the reader; books which have other aims would not fall into this classification. "Contemporary national standards" I understand to mean that standard which would be applied by the community at large, rather than by a specific segment thereof. I believe that under such standards, hard-core obscenity or pornography would have to be grossly devoid of any literary merit, fail to communicate (or rather, fail to *try* to communicate) any emotional understanding, and in addition, be completely devoid of any attempt to communicate the author's understanding of reality. Frankly, I find it hard to conceive of such a book, but theoretically, they may exist.

In my opinion, the Handbook does not meet such a standard of hard-core pornography, on several counts. First, it clearly and definitely is not purely erotic in nature. The report of the author's experiences in pregnancy and delivery, for example, can by no stretch of the most prurient imagination be called erotic; if anything, they are anti-erotic in effect. True, these segments of the book may offend some persons, but so do the Bill of Rights and the Bible offend some persons. I think that there are other aspects of this book which would have an erotic effect on many readers, but it is my opinion that these effects derive from the quality of the author's experiences. A sexual response is a normal and healthy response in many situations; reading about one person's sexual experiences, especially when recounted with the sensitivity and clarity of the author under discussion *ought* perhaps to produce such an effect. But to assume that such an effect is bad, and that writing which evokes it is pornographic, is to

Defendants' Exhibit 36

condemn readers to nothing more stimulating or intellectual than the Bobbsey Twins.

I would go a step further to suggest that this book is indeed a very valuable little piece of writing. It manages to convey to me a sense of how a woman may feel in a sexual situation which I have not been able to secure at any previous time. Despite the statement of the Post Office Department sent to Senator Javits and forwarded to me, that "competent authority had previously indicated that the book would not be of value to the public health or medical profession" (and, by implication, the psychological profession) I have found it most valuable.

Regarding the law itself, it seems to me to be foolish, at the very least. The "average person" whose opinion is taken to be decisive, does not exist. "Community standards" vary; in the community of psychologists to which I belong, for instance, this book would be received quite differently than in the community of PTA parents to which I also belong. That "prurient interests" would be stimulated in some is of course demonstrated by the fact that the prurient interests of the Post Office Department and perhaps some Congressman have been stimulated. But this does not prove that such is the purpose or aim of the book.

I have found it most difficult to find out something about how women feel about sexual experience, in words which carry conviction and a sense of reality. I am very happy to be able to read this moving book, which seems to be to a valuable autobiographical document. If public opinion were to determine what I could read, many of the professional books on my shelves would be unavailable. I do not believe that the standard of community acceptance has any validity to begin with; and I do not believe that this book should be suppressed even under such standards. As a matter of fact, I question the total idea of censor-

Defendants' Exhibit 37

ship, on the basis that one man's literature is another man's pornography.

I hope that this statement is useful to you. Should you wish any further comment, please feel free to contact me. Good luck in your case.

Very truly yours,

Lawrence S. Baker
LAURENCE S. BAKER, PH. D.
Certified Psychologist,
New York State

P. S. As a matter of fact, it seems that a strict reading of Section 1461 of Title 18, United States Code, amended by Public Law 85-796, under which the Post Office Department impounded this book, would prohibit writing one's Congressmen regarding changing of the law, which seems ridiculous. L. S. B.

Defendants' Exhibit 37, Annexed to Foregoing Affidavit

EDWARD C. FALK, M. D.
436 Hazen Road
Sharpsville, Pa.

February 27, 1963

Mr. Ralph Ginzburg
Editor & Publisher
Eors Magazine, Inc.,
110 West 49th St.,
New York 18, N. Y.

Dear Sir:

Medically speaking, after thirteen years of practice in general surgery, I feel "The Housewife's Handbook on Selective Promiscuity" is an intensely interesting psychology study. It should be useful to anyone engaged in

Defendants' Exhibit 38

marriage counselling. I feel it would do much for women who, through ignorance, have come to consider themselves sexually inadequate. There is a constant need for frank discussion of female sex attitudes.

"Handbook" presents material in a form which the layman can understand and which is not hidden in medical terminology. The sex education it offers is sound and effective.

The writing in this book does not have the tenor of pornography but rather that of a straight forward factual presentation which I feel was the author's intent.

Yours, truly,

(Signed) E. C. Falk, M. D.

EDWARD C. FALK, M. D.

ECF:BF

Defendants' Exhibit 38, Annexed to Foregoing Affidavit

FIVE PARKWAY
Hanover, New Hampshire

March 11, 1963

Mr. Ralph Ginzburg
Editor and Publisher
Eros Magazine, Incorporated
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have received your letter concerning your indictment by a Philadelphia Federal Grand Jury and your request for some statement from me regarding my opinions of the book, *The Housewife's Handbook on Selective Promiscuity*. I am happy to give you my opinions of this book. I have read it with care and interest.

Defendants' Exhibit 38

May I first preface the statements which follow by saying that I am responding to your request in my capacity as an individual trained in the field of psychology, *not* as a professor of psychology and chairman of the department at Dartmouth College, my present position and institutional affiliation. I express this qualification to insure that my remarks are interpreted as an expression of individual judgment and opinion and bear no relation to the institution which employs me. Insofar as my professional training lends any special weight to my statements, let me say simply that I hold an M.A. and Ph.D. degree in psychology from Princeton University and have taught psychology for thirteen years, nine of them at Princeton and four of them at Dartmouth. I am a member of a number of professional societies, including the American Psychological Association, and have authored two books in psychology and over two dozen research papers appearing in various scientific journals.

My opinion of what constitutes "hard-core pornography" in terms of "contemporary national standards" is clear, at least to me; namely, there is no valid concept of "hard-core pornography" according to such standards for "contemporary national standards" is a myth until someone measures them. Who is to say? What are the criteria? If I *had* to define what constitutes "hard-core pornography" in terms of "contemporary national standards," I could do so only by example—a rather nonrigorous means of definition. The example would be the "dirty comic books" wherein well-known comic strip characters are depicted tastelessly and blatantly in sexual intercourse. The book in question here is so far removed from such an example that I do not see how any reasonable person could treat them as the same or even remotely similar.

The Housewife's Handbook on Selective Promiscuity could be construed as hard-core pornography or porno-

Defendants' Exhibit 38

graphic (whatever the difference is) by only the most rigid of moralists—in my opinion. Of course, an extreme moralist can make any public expression of sexuality pornographic. I find the book in question a candid, unpretentious, and honest account of one person's search for sexual sanity and meaning in life. The fact that her frankness is expressed by language unembellished by circuitous idiom and quasi-technical jargon does not make her account in any sense pornographic—it simply makes her experiences meaningful to the reader. She writes about sexuality the way many people experience it—the good, the bad, the confused—all of it. As a plea for a more naturalistic view of sex and as a document of sexual experience of unusual honesty, I would hope that many people would read this book. It is an excellent antidote to the prudery, the dishonesty, and the self-deception that surrounds sex in this society.

I hope sincerely that your efforts in defending against the indictment helps insure that the postmaster general is kept busy in the future delivering the mail—not passing on the morality of what's in it.

Sincerely yours,

(Signed) William M. Smith
WILLIAM M. SMITH

WMS:JAR

Defendants' Exhibit 39, Annexed to Foregoing Affidavit

THE EAST WHITTIER UNITED PRESBYTERIAN CHURCH
A Community Church
1244 East Second Street
Whittier, California

ROBERT L. CALDWELL, Minister

20 February, 1963

Mr. Ralph Ginsburg
110 West 40th Street
New York 18, New York

Dear Sir:

I have received the copy of the *Housewife's Handbook on Selective Promiscuity* and have read it. (Incidentally, I ordered a copy some months ago, with a check, and have not as yet received it.)

As a minister of a large church in an urban community, with the A.B., B.Th., Th.D., and D.D. degrees, and with nearly twenty years of professional experience in the field of pre-marital and marital counseling, I have needed such a book as this Handbook and am grateful that it is finally available.

For too long sex facts have been disguised in technical terms. Every book on sex and marriage on my shelves refers to the "genital kiss". The handbook plainly puts the cards on the table and any layman can understand the terminology. Plain language cannot and does not constitute pornography, "by contemporary national standards" or by any Christian standard I know. I find nothing of prurient or salacious character in the handbook, and shall find myself referring to it often in my work.

If this Handbook was weighted with descriptions of abnormal sex acts, and if it was clearly designed to stimulate

Defendants' Exhibit 40

the sex drive, I would find it valueless. It seems to me that such is not the case.

Very sincerely yours,

(Signed) Robert L. Caldwell
ROBERT L. CALDWELL

RLC:mb

Defendants' Exhibit 40, Annexed to Foregoing Affidavit

DRS. P.G. AVALON AND T.A. MANNING
Cathlamet, Washington

February 22, 1963

Ralph Ginzburg
Eros Magazine, Inc.
110 West 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg,

I sent for this book because of advertising that was sent to me suggesting that this book was of value for "marriage counselors". I read the copy you sent me and I feel certain you would not want my opinion for defense. I feel that at best this is a shallow attempt at sensationalism. Actually I agree with the post office authorities. This book in my opinion is obscene or else just poorly done. To take the writings of an obviously disturbed person (or else crafty enough to aim at erotic stimulation) and present them as a study in female sexual practises is either poor writing and editing or as the post office claims actually pornography.

I forbid the use of my name in anyway in relations to this book except in a critical fashion. Had I known its contents I would never have purchased it and I have

Defendants' Exhibit 41

learned a lesson regarding purchasing books through the mail. Henceforth it will be only from a known house or at least a known volume.

Sincerely,

Phillip G. Avalon
PHILLIP G. AVALON, M. D.

PGA/ef

Defendants' Exhibit 41, Annexed to Foregoing Affidavit

ALAN F. GUTTMACHER, M. D.
501 Madison Avenue
New York 22, New York

PLaza 5 - 8800

March 6, 1963

Mr. Ralph Ginzburg
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

The reason I did not acknowledge the book on Selective Promiscuity is that I had a puritanical revulsion to it. I have never before thrown a book in the wastebasket but I did and when I tried to retrieve it twenty-four hours later, it was gone and is either enriching the library of the maid or the apartment trashman.

I thought the book was indifferently written and served no real purpose. It began with a rather elaborate apology by Ellis and then by the author's daughter which created uncertainties in my mind before I read it. When I read it I had the feeling that some of it might be of value between the covers of a scientific journal but not useful to

Defendants' Exhibit 42

the lay public. I assumed such thoughts would be of no value in your struggle with the Post Office Department and therefore did not commit them to paper.

With cordial regards.

Sincerely yours,

ALAN F. GUTTMACHER

AFG:mp

Defendants' Exhibit 42, Annexed to Foregoing Affidavit

PRINCETON UNIVERSITY LIBRARY

Princeton, New Jersey

WILLIAM S. DIX, *Librarian*

February 15, 1963

Dear Mr. Ginzburg:

You have sent me a copy of a book entitled *The Housewife's Handbook of Selective Promiscuity*, together with a letter in which you ask several questions. Having examined the book, I must reply to your questions as follows:

1. I hold a Ph.D. in English from the University of Chicago and thus presumably have some professional training for judging the literary merit of a book. I have no professional qualifications whatsoever for judging the sociological or medical value of a book.

2. I decline to attempt an interpretation of the phrase "hard-core pornography" as used by the Supreme Court. My own personal test goes something like this: A book is pornography if the only possible reason for its publication is pornographic. That is, if a book contributes nothing to scientific knowledge, if it has no literary value, etc., etc., and its primary ingredient is sex, I suspect it of being pornographic.

3. In my opinion, the *Handbook* is pornographic. I am confident that it is absolutely without literary merit, and I suspect that it has no scientific merit, etc. etc.

Defendants' Exhibit 43

4. In my opinion this book is completely without value to society.

I am returning the book to you by Railway Express.

Yours truly,

WILLIAM S. DIX

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Defendants' Exhibit 43, Annexed to Foregoing Affidavit

February 19

WOODSTOCK COLLEGE
Woodstock, Maryland

Dear Mr. Ginzburg:

I am of no use to you in your legal situation. By my profession, as a priest, I am forbidden to intervene in any way in actions at law.

I am therefore free to take the question at a higher level. The question then is not whether your book (yours by adoption) should be allowed to go through the mails. The question is the value of your book.

I read it. Its value is obviously zero. Its theme (in so far as it has a theme) is banal and nugatory. We all know that sex is mysterious and that the mode of initiation into its mystery is, for that reason, difficult, and for that reason, often botched. This is not news.

The technique for the development of the theme (Rey Anthony's clinical description of her sexual experiences) is irrelevant, superfluous, ineffective, and in the end boring.

The book therefore has no value, no public value. In consequence the issue of "obscenity," in some legal sense,

Defendants' Exhibit 44

is trivial. The real issue is, whether the book is stupid. I think it is.

Your legal situation is interesting. The question is, whether you are to be indicted as a knave or a fool. These are not indeed legal terms. But they state the issue at a level more profound than the level of law. For my part, oddly enough, I tolerate knaves more readily than fools. Especially fools who want to make money out of stupidity. As I presume you do. You surely are not so stupid as to tell me that you publish EROS out of sheer love of the truth, and beauty, and goodness. There are limits even to rationalization. You know you have a market.

Faithfully yours,

John Courtney Murray, S. J.
JOHN COURTNEY MURRAY, S. J.

Defendants' Exhibit 44, Annexed to Foregoing Affidavit

SWARTHMORE COLLEGE
Swarthmore, Pennsylvania

February 20, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

This is in reply to your letter about Rey Anthony's book. As a psychologist, I am in no way qualified to take a stand on the matter. I am an experimental psychologist and do not deal professionally with social problems.

Defendants' Exhibit 45

Speaking as an ordinary observer: I see no merit in Mrs. Anthony's book. As a literary product, I find it quite repulsive and as a social document, unnecessary.

Sincerely,

Hans Wallach
HANS WALLACH
Professor of Psychology

HW:dj

Defendants' Exhibit 45, Annexed to Foregoing Affidavit

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
Cambridge 39, Massachusetts
the Libraries

13 March 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

You asked for my evaluation of *The Housewife's Handbook on Selective Promiscuity*.

I think this book is pornographic in intent and in execution and should not be available to the general public. If it is a medical document of importance it should be made available to doctors in the usual way.

I am convinced that the author and publishers of this book have as their only intent the making of money by exploiting the baser sides of human nature. They should be put in the same category with purveyors of dope and prostitution.

Very truly yours,

William N. Locke
WILLIAM N. LOCKE
Director of Libraries

WNL:bd

Defendants' Exhibit 46, Annexed to Foregoing Affidavit

ROBERT CUSHMAN MURPHY
"Briarlea," Old Field
Setauket, L.I., N.Y.

23 February 1963

Mr. Ralph Ginzburg
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

Thank you for your letter and Rey Anthony's book. I had already noted with satisfaction that the Civil Liberties Union had associated itself with your defense against Post Office censorship.

I am a biologist, not a physician. I hold a Bachelor's, Master's and two doctoral degrees. Now retired, though still engaged in research, I have been successively or contemporaneously a university teacher, president of a biological laboratory engaged in genetic research, and staff member of a natural history museum.

My conception of "hard-core pornography" is published matter which has no other purpose than to entertain by descriptions of sexual aims, acts and relationships.

Mrs. Anthony's book by no means fulfills this definition. It contains matter of broad biological and sociological value. The welfare of most adults would be bettered by a knowledge of her own case history. It is not necessary to agree with her in all aspects of taste or to assume that her personal point of view should control every (or even any) other individual. She has, however, written without inhibition a rare and useful reflection of the sexual life of one articulate human being.

Her book could, of course, be put to pornographic ends, but the same is true of the Bible. Its object is palpably

Defendants' Exhibit 47

to present with conviction alternate standards of human behavior which are not yet widely, and certainly not openly, accepted.

Yours very truly,

R. C. Murphy

Defendants' Exhibit 47, Annexed to Foregoing Affidavit

(Letterhead of)

THE UNITARIAN CHURCH OF TUCSON, ARIZONA

Feb. 22, 1963

Mr. Ralph Ginzburg
Editor and Publisher
110 W. 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg:

Thank you for sending me the copy of the "Housewife's Handbook."

I am the minister of the Unitarian Church of Tucson, a graduate of Boston University and of the Andover-Newton Theological School, and have no other claim to distinction other than as a parish clergyman.

The "Handbook" I have been familiar with for some time, having one of the original copies in the multi-lith edition. Both of my college-age daughters have read it, as have my secretary and a number of my parishioners and friends.

You ask, "what is hard core pornography" by contemporary national standards? I would say that it is that which passes beyond a rather tenuous line, into the realm of the non-artistic and non-literary, and which has the obvious intent of having been produced mainly for its erotic effect

Defendants' Exhibit 47

and its appeal to abnormal sexual passion. Such a work should be judged as a whole and not by appeal to isolated passages, and especially by its effect upon a relatively normal person of good emotional health. Ordinarily, in such a person the first impression would probably be of some degree of sexual excitement, followed by one of disgust. Good taste, which of course cannot be legislated, has a great deal to do with it but is not the guiding factor.

Is the "Handbook" pornographic. By part of this definition I have just given it is. Many who have read it have confessed to some sexual excitement. Several have been disgusted. One housewife called it "nauseating." The more frequent comment has been "boring."

I know there is a copy at a Lockheed plant in California that is being rented out at a stiff fee, and I have been assured that the interest shown by readers is that afforded to pornographic literature.

Several, however, who have read it have gone out of their way to assure me that although it was "boring" or even "disgusting" they did not feel it was pornographic. My daughters were impressed by the plea made by the author for a more sane approach in treating sex matters. I have only found one who thought the book should be suppressed.

I personally feel that it is inappropriate for popular distribution, but does that make it "obscene?" No, for the author's intentions are clearly stated. Even though some of us may disagree violently with her thesis, and especially her way of presenting it in such a stark and shocking way, we cannot put this book in the same category as many that I have seen, which are obviously and completely written for one purpose only—to appeal to the lowest passions of ignorant people.

One of the factors common to most "hard-core" pornography is the portrayal of sexual themes in an absurd or bizarre or highly exaggerated context. I have in mind a bit

Defendants' Exhibit 47

of colored paper which, when folded properly and held up to the light, shows four human figures engaged in socially-frowned-upon sexual acts. Most "hard-core" pornography contains an exaggerated absurdity. It goes beyond even what he might call perverse or abnormal into the outright fantastic. Does this book do this? It does not. It presents a rather repetitive series of sexual experiences in a clinical setting, and is not a departure from reality even though it may be a departure from the desirable.

What value does it have to society? In the medical and counselling fields, considerable, and I have so used it. In the hands of the ordinary layman, many of the points raised will be missed, almost in direct proportion to the education of the reader. It certainly is an unfortunate book. The author has told me that she deliberately used the vernacular so that non-technically trained readers would know what she was talking about. She succeeded only too well! But again, one has to raise the question—is its general impact that of obscenity, or that of an educational or literary production? It is not, by almost any standard, well written. Dr. Bryan states that it is neither a handbook nor a guide to sexual behavior. Could it be so taken? Perhaps, by the emotionally immature and impressionable. But is this a cause for censorship? No, no more than the works of Machiavelli or those of Hitler, which contain repugnant ideas also, should be censored. Perhaps had it appeared in another format, associated with medical textbooks, it might be more acceptable.

It was not so published, however, and is apparently available to anyone who has the price. So we come again to the question, what values has it to society? I think it is a book that would not be missed by the layman, but to the researcher and especially to those in counselling fields, it is definitely a contribution to knowledge.

This, however, is not the real question. If we can censor one book with which we do not agree, then we can censor

Defendants' Exhibit 47

any book and this is not the function of a democratic society. Bad taste, poor literary judgment, even inappropriate or questionable ideas, these are not the point. There is a case for the prosecution of a certain type of well-recognizable commercial pornography, with no redeeming qualities and whose appeal is palpably prurient, but even this control is fraught with risk unless used with the utmost discretion.

We must trust people. We have no right to set up an "index", and the fact that I or anyone else might wish to have this book on my shelves for special use but would also wish to deprive it from casual reading by giggling high school students is not a legitimate case against this book. In fact, such an attitude, even though I subscribe to it in part, runs dangerously close to that of the garrison state. Such privilege is actually not becoming to intellectual freedom and should be invoked only as a last resort. We can *channel* publications of this type, if we so desire, so that the chances of their falling into the hands of the impressionable is remote, but this is a type of responsibility that lies beyond the power of the courts, and rests in private rather than in public hands.

I must admit that for those who recoil violently (as I do) from the type of sexual permissiveness advocated by "Rey Anthony" this is a somewhat extreme type of permissiveness. Yet, as Americans, I feel most strongly that we as Americans must be able to stand the consequences of our own freedoms and if we cannot, then we have failed miserably in our most basic premises.

Therefore, to summarize, even though as some have said the book may be dull, devoid as some have said of any great literary merit, boring as it is to many and offensive as it is to some, it is a book of honest literary intent, sufficiently valuable to society, sufficiently redeemed by bringing out

Defendants' Exhibit 48

into the open a phase of life too often suppressed, to fall outside of the definition of "hard-core" pornography. In my opinion, the publisher should not be prosecuted, even though he is on a very thin line indeed at some points.

Sincerely,

George C. Whitney
GEORGE C. WHITNEY
Minister

Permission to quote from this letter is granted only under the proviso that it be used in its entirety, or at least, by entire paragraphs.

Defendants' Exhibit 48, Annexed to Foregoing Affidavit

EMORY UNIVERSITY
Atlanta 22, Georgia
Candler School of Theology

March 19, 1963

Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Gentlemen:

Through a friend, who is a psychologist, a copy of your book, *The Housewife's Handbook on Selective Promiscuity*, came to my attention. It was read with much interest and with some advancement in my understanding of the expression of sexual feelings in women. For my personal use it was valuable, but the ethical standards of Mrs. Anthony are too much at variance with those of Candler for me to ask the librarian to secure a copy for the use of our students.

However, our students very much need materials which will broaden their understanding of sexual relationships.

Defendants' Exhibit 49

They need materials which will approach their sexual behavior in a way that does not threaten their standards so much that they have to reject the information given in order to protect themselves against too much anxiety. Therefore, I would be interested in materials which you might have which could accomplish this goal.

Would you please send to me your booklist and any other information which you feel would be of value in aiding me to interpret the titles of the books? This would be very much appreciated.

Incidentally, in addition to being a minister of The Methodist Church, I am also a member of the American Psychologist Association. I believe that my attitudes regarding sex are probably a good bit different from that of many other ministers.

Respectfully,

Quentin L. Hand

QUENTIN L. HAND, PH.D.

Asst. Prof. of Psychology and
Pastoral Counseling

Defendants' Exhibit 49, Annexed to Foregoing Affidavit

ELLIOTT H. MORSE

231 Essex Ave.

Narberth, Penna.

March 13, 1963.

Dear Mr. Ginsburg:

In accordance with your request of January 31st I have read "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony. My replies to your four specific questions follow.

1. I have academic degrees from Haverford College, Drexel Institute of Technology, School of Library Science,

Defendants' Exhibit 49

and the University of Pennsylvania. I have been employed in the libraries of the University of Pennsylvania and Temple University and am presently employed as Librarian of the College of Physicians of Philadelphia. I have held office in the Special Libraries Council of Philadelphia and in the Medical Library Association. I have edited two library magazines. I am President of the Board of Trustees of the Narberth Public Library.

2. To me, hard-core pornography is material specifically produced to stimulate sexual response without any literary, artistic or scientific merit. Its intention is solely to gain a profit by catering to the taste for the sensational. It is most frequently characterized by photographic or other illustrative material posed or delineated in suggestive or provocative attitudes. Obscenity itself, I take to be determined by the context in which it is used. Narrow definitions of obscenity could be applied to the Bible and to Shakespeare. Certainly the author's intent is more pertinent than the choice of particular words.

3. The Handbook certainly does not qualify as "hard-core pornography". It is certainly not in the same category with the so-called "Girlie magazines" and other newsstand trash which is so frequently displayed and sold on corner display racks.

Although it is not pornography or even obscenity, I would not recommend its general availability in public libraries or on sidewalk newsstands any more than I would consider it appropriate to so distribute manuals of obstetrics or technical treatises on cancer and liver diseases.

Many case studies of the psychiatrically disturbed personality are available to medical students and practitioners and they are allowed to go through the mails without interference. It is usually presumed, however, that the purchasers of these books have sufficient scientific background

Defendants' Exhibit 49

to understand and evaluate the material and will not assume that anything in print is true and normal.

Rey Anthony's book is an interesting case study. However, a single case study without competent professional analysis is of doubtful scientific value. Furthermore the author's criticism of modern moral and legal values without the proposal of any practical substitute is a destructive rather than a constructive approach.

The author's criticism of marriage, her advocacy of polygamy, her defense of abortion, and her ridiculing of the "normal" sound suspiciously like the rationalizing of a person who was unable to establish a well-adjusted marital relationship. Her inability to determine the parentage of several of her own children suggests a social situation which would create as many problems as the one she is criticizing. The author herself may be a disturbed personality and we may be horrified to learn of her counselling activity but her book is not pornography nor it is obscene.

4. The value of this book to society is marred by its poor organization and by its absence of literary merit. Dr. Ellis' brief introduction is an inadequate evaluation for the highest scientific purpose.

On the credit side, the author may be complimented for her plea for teaching children proper terminology for parts of the body and for body function. Such instruction should go a long way toward the prevention of obscenity and pornography. The harm of raising children in an unhappy marital situation deserves emphasis even if we suspect that the author did not always choose her mates wisely or exhaust all possible means of making her marriages work.

Our divorce rate could be materially reduced if the author's advice were followed to define the limits of a situation before it is entered into and if prospective husbands and wives were thoroughly explored each other's basic attitudes.

Defendants' Exhibit 50

In conclusion, I do not believe that this is a great book, a well written book, or any significant contribution to scientific advance but at the same time I am convinced that it is neither obscene nor pornographic.

Yours very truly,

Elliott H. Morse.
ELLIOTT H. MORSE.

Defendants' Exhibit 50, Annexed to Foregoing Affidavit

MARY S. CALDERONE, M. D.
245 Kings Point Road
Great Neck, New York
HUnter 7-4005

March 7, 1963.

Mr. Ralph Ginzburg
Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have just returned from a six weeks' trip to Europe and Asia which will explain my failure to answer your letter more promptly.

First of all, in making the following statement, I wish to stipulate that if it is used at all it must be used in toto. I do not wish any single statement to be taken out of context and quoted in any connection whatsoever either legally or extra-legally. First thing I want to make clear is that I hold no brief for Mrs. Anthony's book as far as intrinsic value to the general public is concerned. Its sole value lies in its clear-cut chronicling of the development of sexual feeling in a woman, and in the way it depicts the various adverse influences on such development as they all too often occur in our society. This chronicle is valuable in that we have all too little knowledge of the process. But

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the value stops there because I am at complete odds with the stupid and misleading title, with the role that Mrs. Anthony has accorded sex in her life—i.e.: as an end experience in itself rather than as a means of communication with a life mate—and I am particularly at odds with the very “promiscuity” that is noted in the title, and with the inclusion of her own daughters in this kind of an atmosphere. I do not believe that this is how young people are taught to integrate sex as a constructive force into their lives.

The major defect lies not in the book but in Mrs. Anthony herself: she has never progressed beyond sex as a source of self-gratification. Even the way she obtains this gratification is essentially onanistic. Thus she has apparently been arrested at a fairly low level of sexual development. She does not make this clear in the book because she is undoubtedly unaware of it, and it is probably her own personality defects that would render her unable to reach into the higher phases of sexual experience, that is, the truly communicative phases.

As to the basic question—is the book pornographic, I would give my opinion as no, it is not. This opinion stems from my Webster's New World Dictionary definition of pornography as “writings, pictures, etc., intended to arouse sexual desire”. The key word here is “intended”. As far as I am concerned I can go to any corner drugstore or bookstand, particularly in the less privileged areas of any city in this country, and pick up magazines and soft cover books that clearly fulfill this definition: they were written with the prime *intent* of arousing sexual desire in the reader. I am convinced that Mrs. Anthony's book was not written with any such intent, but rather with an honest intent to inform and to educate—to clear up an area that is in our society obscured by ignorance and fear—creating terrible sexual and marital disabilities that result in great unhappiness among men and women, some of whom have written to me about this. As a matter of fact I have quoted some of these letters in my own book “Release from Sexual Tensions”.

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I believe that the question of pornography lies perhaps more with the reader than with the book. There are countless numbers of publications in public and private libraries that can be read with pornographic intent, although they are clearly not written with such intent. That Mrs. Anthony's book can suffer from this disability should not, I believe, render it liable to suppression. Such an action would most certainly be straining at the gnat while swallowing the camel. Let our authorities proceed against the all too many camels easily and readily available to all of our young people in corner drugstores, station and airport newsstands, etc., and let them stop wasting their time and taxpayers money on going after this one simple little fly with a tar brush big enough to knock down the Empire State Building!

Very truly yours,

MARY S. CALDERONE, M. D.

msc:rd

Dictated but not read

Defendants' Exhibit 51, Annexed to Foregoing Affidavit

CITY OF PHILADELPHIA
The Free Library of Philadelphia
Logan Square, Philadelphia 3, Pa.

March 8, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

Your letter concerning the *HOUSEWIFE'S HANDBOOK ON SELECTIVE PROMISCUITY* is at hand.

I am a firm believer of freedom to read, freedom of the press and believe that all persons concerned also have a responsibility to society.

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The book in question is not one for general reading in my opinion. It would seem that its chief value would be to those in the fields of social welfare, psychiatry and medicine. What the evaluation of the book by experts in these fields would be, I do not know.

The book is being returned to you under separate cover.

Sincerely,

Emerson Greenaway
EMERSON GREENAWAY
Director

d

Defendants' Exhibit 52, Annexed to Foregoing Affidavit

SOPHIA J. KLEEGMAN, M. D.
Fifty-Nine East Fifty-Fourth Street
New York 22, N. Y.

Telephone PLaza 3-8839

March 15, 1963

Mr. Ralph Ginzburg
Eros Magazine, Inc.
110 West 40 Street
New York 18, New York

Dear Mr. Ginzburg:

My evaluation of Rey Anthony's book is that to me it seems a synthetic work about an unreal person. If she actually exists as portrayed, then she is just as emotionally ill, and sexually maladjusted as is a totally frigid woman. Both lack the capacity to love and are unable to achieve maturity.

Defendants' Exhibit 52

In view of my negative reaction to the book, and to the author's way of life, I do not know whether you wish any help from me. If you do, and if you agree to quote the following paragraph in its entirety, you may do so. However, you may not take out only an excerpt for your use. This is my statement:

Rey Anthony portrays her emotional and physiological sex life, which is the abnormal experiences of an emotionally ill woman. Her illness makes it impossible for her to develop into the kind of woman, wife, and mother who can build a healthy emotional climate for her husband and children. Rey Anthony is hurtful for society. However, it would be just as hurtful to have the book banned. This book has a right to be written, and it has a right to be distributed. In my role as educator, I shall oppose every influence which results in a Rey Anthony. In my role as citizen, I just as strongly oppose the type of censorship which would suppress what she has to say.

Sincerely yours,

Sophia J. Kleegman, M. D.
SOPHIA J. KLEEGMAN, M. D.

SJK:bj

cc. to Doctors Calderone, Levine and Ellis

Defendants' Exhibit 53, Annexed to Foregoing Affidavit

J. C. BEESLEY, M. D., F. A. A. P.
Infants and Children
525 Frederick Street
Lancaster, Ohio

March 15, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 W. 40th St.
New York 18, N. Y.

Dear Mr. Ginzburg:

In reply to your letter.

I graduated in 1943 from the University of Michigan. I am a member of the American Academy of Pediatrics. I am in private practice as a pediatrician, and am medical director at the Boys Industrial School in Lancaster, Ohio.

My opinion of "hard core Pornography" as judged by contemporary standards, would be movies, depicting sexual acts; pamphlets and cartoons, of the "Maggie and Jiggs" type and anything drawn or written or done for pure erotic arousal.

I do not feel the handbook is pornography. Although my personal moral ideas do not correspond to the authors in relation to her promiscuity, I feel she has given a valid and valuable picture of her feelings and desires. It is extremely difficult even as a physician to obtain information such as this. Certainly a great deal more information of this would be of great help. I am certain that she is not correct in all her statements. Never the less they obviously reflect her feelings. I find most women are very reluctant to discuss this type of material.

Of course, I can see no evidence that pornography corrupts the morals of a nation. If one wishes to indulge, it should be an individuals choice. I do not feel that porno-

Defendants' Exhibit 54

graphy can in any way be successfully controlled by legislation. It never has been and never will be.

Where there is a will, there is a way—

Sincerely,

J. C. Beesley, M. D.

J. C. BEESLEY, M. D.

Defendants' Exhibit 54, Annexed to Foregoing Affidavit

UNION THEOLOGICAL SEMINARY
Broadway at 120th Street
New York 27, N. Y.

March 14, 1963

Mr. Ralph Ginzburg
The Library
c/o Documentary Books, Incorporated
110 West 40th Street
New York 18, New York

Dear Sir:

I have read your book. My reactions on the book and upon the specific questions you raise are as follows.

In my view, hard-core pornography is writing (or other forms of expression) whose primary intent is to play upon the sexual sensibilities. It aims to stimulate persons excessively and abnormally. It uses one-sided emphases and distortions to arouse the emotions, and to obscure the larger human picture of which its episodes constitute a (distorted) part.

From this definition it will be seen that the *intent* of the writer is a basic factor. And *intent* is an ambiguous concept for the law to try to appraise. But, since the law must proceed through human observers and interpreters, it is impossible to form a judgment upon the end product

Defendants' Exhibit 54

without having one's judgment conditioned by the writer's apparent intent.

Now, as for the *Handbook*, in my judgment the possible value which might be adduced from the clinical-type details so frankly recorded are compromised by their integral association with a view of sexual irresponsibility which leaves the reader dubious about the "balance" of the author.

Sexual wisdom, to be authentic and helpful, is *not* most appropriately conveyed through the experiences of an individual who, judging from the record, is a victim of nymphomania.

My negative reaction to the *Handbook* is not directed towards its frank recording of sexual attitudes and experiences, but rather to the light-handed view of marriage and the sexual relation which is implicit and explicit throughout its pages. Surely it is not to be reasoned that the promiscuity here recorded is a necessary or desirable concomitant in assuring the attainment of compatible sexual satisfaction in a stable marriage.

Finally, were I otherwise satisfied with your interest in publishing the *Handbook*, I would have grave doubts about your use of the present title. As much as the contents of the book itself it makes me suspect your interest in publishing it. I am returning the *Handbook* under separate cover.

Sincerely yours,

Robert F. Beach
ROBERT F. BEACH
Librarian

RFB:al

Defendants' Exhibit 55, Annexed to Foregoing Affidavit

THE WISTAR INSTITUTE
Thirty-Sixth Street at Spruce
Philadelphia 4, Pa.

March 12, 1963

Mr. Ralph Ginzberg
% Documentary Books, Inc.
110 West 40th St.
New York 18, N. Y.

Dear Mr. Ginzberg:

I have read "The Housewife's Handbook of Selective Promiscuity" which you sent me upon request of William Purcell. Pursuant to your request I will reply to the questions asked in your covering letter:

1) I hold the B.S., M.S., and Ph.D. degrees in Chemistry. I am now doing research in Biochemistry, specializing in fat metabolism.

My current positions are: Member, The Wistar Institute; Assoc. Professor Biochemistry, U. Penna. School of Medicine.

2) My definition of "hard-core pornography" is material written for the *sole* purpose of titillating the reader.

3) The Handbook is not an example of "hard-core pornography" because the prologue and epilogue attempt to define the reasons behind the writing of the book. The reasons are justifiable.

4) I cannot judge the values to society of this book from the same pinnacle of expertise as the reviews of Bryan and Frumkin, which you sent with the book. The book is one sample of an attempt to point out the fallacies behind some of the popular misconceptions and taboos. I am not well enough acquainted with this area of writing to state whether this is one of the better attempts in this direction, but I doubt it.

Sincerely yours,

David Kritchevsky
DAVID KRITCHEVSKY

DK:rb

Defendants' Exhibit 56, Annexed to Foregoing Affidavit

RICHARD I. DARNELL, M. D.
North Main Street
New Hope, Penna.

New Hope 2803

March 18, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

Your publication by Rey Anthony has been received and read, along with the enclosed letter and reprints of criticisms of the book.

This letter is in response to your request for opinion regarding the handbook. I have been a physician for twenty-three years engaged in family practice, and have been in this small community, with a high percentage of personal adjustment problems among my patients, for the past twelve years. I have been acquainted with Writers like Schiddel (Devil in Bucks County and Scandal's Child) and do a fair amount of reading and conversing for both professional and personal information and enjoyment. I am unable to define obscenity and hard-core pornography as requested, since contemporary literature seems to have much more freedom of expression than was true twenty-five years ago.

I cannot question the judgment or the standards of the reviewers whose remarks have been reprinted and included with the volume. However, only the latter part of the handbook appears to justify the praise embodied in the criticisms. The earlier part, which is the bulk of the book, and which purports to be an autobiographic recital, ap-

Defendants' Exhibit 57

pears to me poorly written, so poorly in fact that the criticisms seem not to match the quality of the writing at all. I wonder if the criticisms quoted applied to another book or to only a portion of this handbook. This type of material is important and desirable in understanding personal problems in people of diverse background. Such material however, can be presented in an interesting fashion with skill that is not apparent in this volume.

In summary, I find fault not with the content of the volume "Handbook," but with the poor quality of writing in which important information is presented. I cannot match the book with the criticisms purporting to be of it.

Sincerely yours,

Richard I. Darnell, M. D.
RICHARD I. DARNELL, M. D.

RID:ar

Defendants' Exhibit 57, Annexed to Foregoing Affidavit

Palo Alto
California
29 January 1963

TO WHOM IT MAY CONCERN:

This country was founded by people who feared and despised humanity, and who framed laws and established mores which expressed this fear and despite.

Many of their descendants still fear and despise humanity, and would protect their own anxiety by constraining all to their way of thinking.

The rest of us think that, with all its faults, humanity is the *only* good and beautiful thing we have—and we claim the *right* to our belief.

We also claim the right *to describe and to proclaim* what it is to be human, and good, and beautiful, in order that others, who may have been denied this knowledge, may come to know.

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Those of us who have explored the sickness of this country and who have pondered the true significance of human life have seen how much of that sickness derives from fear and despite of humanity, and that the only way to health and joyous life is through acceptance of our own humanity *in its own terms*.

Rey Anthony is one who has seen the beauty and essentiality of humanity and whose message has been of vital importance to many thousands of Americans.

Let *no one* think that the writings of a Rey Anthony can be dispensed with. This country, in the very moment of its technological supremacy, is failing—in itself and in the world—precisely because of its blindness to and rejection of the *human* condition. This country *needs* people like Rey Anthony *in direct ratio* to its inclination to silence her.

BROOKING TATUM

Brooking Tatum, Assoc. Member, Society for the Scientific Study of Sex Member, Psychoanalytic Education Society of San Francisco Trustee, American Sunbathing Association.

Defendants' Exhibit 58, Annexed to Foregoing Affidavit

1313 Arapahoe Street
Golden, Colorado
28 February 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

The Handbook by Rey Anthony has been read and I am now in a position to make comments on it.

I hold the Doctor of Philosophy Degree in Physics and Mathematics. I have taught Physics in several American

Defendants' Exhibit 58

universities for a total of twenty-seven years. I have published a number of papers in the Physics Journals. I give public lectures along philosophical and scientific lines.

The phrase "by contemporary national standards" used by the Supreme Court in its latest obscenity ruling does not mean very much to me since this "standard" depends upon the particular group. Workers in steel mills commonly use a quite different language than used by say a college faculty. It seems to me that people have changed a great deal in their attitudes toward sex words and the whole subject of sex during the last forty or so years. The general attitude is more wholesome and healthy at present. The feeling seems to be that sex is a normal natural healthy phenomenon which can be discussed as is any other subject. To me pornography which derives from the Greek [pornos], that is, to write about harlots, means something of the sort or close to it. Hence the Bible as well as a great deal of literature of all ages deals with it. The term "hard-core pornography" I suppose means, possibly, writing specially designed with the purpose of exciting the sex appetite. This is highly subjective. What would be called "hard-core pornography" by some individuals would not be so called by others. Also this may depend upon the mood or age of any given person. I do not myself consider the Handbook as "hard-core pornography". It would undoubtedly be so considered by some and not so by others.

The Handbook has somewhat the same value as do many others which deal with case histories which involve the sex life of individuals. I am familiar with many such books which are generally available in department and book stores. In any area of knowledge or human endeavor the better one understands the better he is able to deal with it. Knowledge is always better than ignorance in the sexual sphere as anywhere else.

Sincerely,

PAUL F. BARTUNEK.

Defendants' Exhibit 59, Annexed to Foregoing Affidavit

HARVARD UNIVERSITY
Department of Social Relations
Emerson Hall
Cambridge 38, Massachusetts

February 15, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Mr. Ginzburg:

My views on your disagreement with the Postmaster General, I fear, would not be relevant or helpful.

As I see it, frank discussions of the sexual predicament of human beings in our society are needed, and are not pornographic—provided they “tell all.” By “all” I mean that the moral, psychological, social, religious, humanitarian, complications of sex are as important as the biology. Our society being what it is, no normal life is free from these non-biological aspects of sexual life. To take the biological events out of this context is to run the risk of stimulating only physical interest. It is commercially profitable to do so, but whether it is a genuine public service is doubtful.

Sincerely yours,

(Signed) Gordon W. Allport
GORDON W. ALLPORT

Defendants' Exhibit 60, Annexed to Foregoing Affidavit

23 February 1963

At the request of Mr. Ralph Ginzburg, I have read "The Housewife's Handbook on Selective Promiscuity," by Rey Anthony, 7th printing, published by Documentary Books, and would like to offer the following comments on it.

First, as to my professional standing, I am a graduate librarian with a Master of Library Science degree from the University of California and over five years professional experience. I have also been engaged for the past five years in compilation of the first book-length bibliography on sex in literature and its censorship, so I am more familiar than the average individual, and indeed the average librarian, with the literature, concepts, and history of this field.

As for the book in question, although it is sexually explicit, I do not feel it should be ranked as pornography. It appears to be an honest and sincere attempt by the author to perform a socially valuable service and to present for consideration honest ideas and actual human experiences, and bears none of the earmarks of the pornographer. I can see, however, how a superficial consideration of it might lead the thoughtless to so view it, but I do not see how the author could have accomplished her purpose in any other way. It is indeed unfortunate that the sexual aspect of our lives should be so hedged about with fears, frustrations, and State sanctioned and enforced ignorance. If this book had been written about almost any other human function, including murder, its explicitness would have aroused little or no comment and certainly no governmental hostility.

As to whether it transgresses the current standard of explicitness, I do not feel qualified, nor do I feel anyone is qualified, to so judge in our pluralistic society. I doubt very much whether there is any single current "standard."

Defendants' Exhibit 61

The United States extends for thousands of miles in each direction, and includes people of every racial, political, national, moral, philosophical, cultural, educational, religious, and ethical persuasion and hue. I do not see how anyone can validly presume to predicate any such standard, most especially with the degree of precision necessary to the law.

I feel that the suppression of this book would be a violation of the basic democratic principle of free expression, and would moreover constitute a tragic diminution of the total body of knowledge available to mankind in its search for understanding of itself.

(Signed) Robert R. Knepper
ROBERT R. KNEPPER
1027 W. 47th St.
Los Angeles 37 Calif.

Defendants' Exhibit 61, Annexed to Foregoing Affidavit

Arnold Maddaloni
99 Clinton Avenue
Stamford, Conn.

Mr. Ralph Ginzburg
Documentary Books, Inc.
110 West 40th Street
New York 18, N. Y.

Dear Ralph Ginzburg:

I have learned of your indictment by a Philadelphia Federal Grand Jury based on the presumption that the book, *THE HOUSEWIFE'S HANDBOOK ON SELECTIVE PROMISCUITY*, by Mrs. Rey Anthony and published by Documentary Books, Inc., of which you are editor and publisher, is "obscene".

Defendants' Exhibit 61

As one who has devoted twenty-five years in the study of the psychology of literary obscenity and sexual science, and contributed several scientific papers on psychoanalysis and psychology, I would like to respond to this indictment.

1. I have carefully read this book and found it to be a sincere, honest and valuable case history of the sexual and psychological growth of one woman. The writer is an exceptional person for writing a lucid and courageous book about the sexual experiences in her life. To argue, as some people may, that this book is "hard-core pornography" is to argue that life itself is pornographic. To believe that this book is evil, or could have an evil influence on the mind of an adult reader, is to indulge in the worst kind of primitive emotionalism possible. It would be more objective and scientific to believe (a) that any suppression of this book on the ground that it could corrupt the sexual life of the reader is an illusion and, (b) that it is a dangerous violation of our constitutional guarantees as expressed in the historical controversies which led to the adoption of the First Amendment.

2. The indictment on the ground that this book is "hard-core pornography" because it does not fit into the Supreme Court's ruling of "contemporary community standards" as to what is not obscene points to the inadequacy of this kind of vague legal definition. If Rey Anthony's book is legally declared to be "hard-core pornography", then it is imperative for us to seriously review and reevaluate what is meant by "contemporary community standards". The most reliable information available at present are the studies made by Kinsey. Mrs. Anthony's book is an insightfully penetrating and educational bomb that explodes the prevailing myths about human sexual life. It should be accepted as a serious autobiography and

Defendants' Exhibit 61

one that may very well indicate the prevalent "off scene" experiences of human relations.

3. I am naturally quite concerned about the problem of censorship in the United States and its relationship to our constitutional guarantees. Some of our courts have professed to be certain of what is literary obscenity, but it is interesting to note that they never could determine the degree of its danger for a legal test. The problem before us is: where and how can we draw the line between decency, permissible indecency, and criminal indecency? As a matter of scientific speculation, do we really try to understand this difference, and how to measure it? The use of synonyms which do not define the offense in overt and objective terms leaves the law to be interpreted according to the sexual psychology of the complainer, the prosecutor, and the judge. In an article entitled JUDICIAL CENSORSHIP OF OBSCENE LITERATURE, published in the Harvard Law Review, Leo M. Alpert concluded that: "There is no definition of the term. There is no basis of identification. There is no unity in describing what is obscene literature, or in prosecuting it. There is little more than the ability to smell it * * * the law, in its ponderous generalities, still remains as a weapon of censorship with the only safeguard the mercy of a judge." It would seem to me that the old Roman adage that "where the law is uncertain there is no law", should still hold.

4. If obscenity is so imponderable that we cannot arrive at an objective definition of it, then it is purely a subjective quality, a matter of our emotions and feelings. It has never been, as in any other criminal offense, defined in terms of any visible or tangible quality. Consequently, we have never been able to establish a uniform criteria of guilt by which a literary performance, which is alleged to be obscene, can be distinguished from another which is not. There is no demonstration of an actual objective

Defendants' Exhibit 61

intangible or tangible force called obscenity. Hence, there is no certainty whatever in the judicial criteria of obscenity. The illusion resides in the act of externalizing what is primarily a subjective condition. When we make this illusion the basis of sex censorship, on the presupposition that there can be a universally accepted theory that a real objective force for evil inheres in and emanates from literature or art, we have entered into the misty and superstitious area of witchcraft. The illusion becomes even more startling when we realize that the basis for the obscenity statute is wholly independent of the existence of any difference of feeling as to where the line is to be drawn between the criminally dangerous and the legally harmless degree of that "obscene" force.

The law is based on the illusion that obscenity in a book "appeals to prurient interests." We must remember that prurience involves longing, desire, propensity, something existing entirely *within* the person as lust. Although obscenity may exist in the contemplating mind, this is not a crime, and not necessarily prurient. Even if we assume that our thoughts can be prurient, can we, under our constitution, punish an undesirable state of mind, although there has been no resultant actual or material injury to anyone? How can we punish any mere psychologic crime? To penalize anyone for mailing a book because some unknown and hypothetical person may become more conscious of his sexual feelings by association is a modern form of witchcraft.

The extension of free speech into printing assumes that opinions as such are not to be censored. The field of opinion is inviolable and should not be suppressed on the supposition of their ill tendency. To suppress Mrs. Rey Anthony's book would be a violation of the free speech and free press guarantee of the First and Fourteenth amendments.

ARNOLD MADDALONI.

Defendants' Exhibit 62, Annexed to Foregoing Affidavit

2112 Rubye Drive
Antioch, California

February 22, 1963

Mr. Ralph Ginzburg
Editor & Publisher
Eros Magazine, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

I have just finished reading *The Housewife's Handbook on Selective Promiscuity* and am prepared to offer some opinions about this book. First, allow me to briefly describe with what background these opinions are offered.

I received my A. B. degree with honors from the University of California at Berkeley and am a permanent member of Alpha Gamma Sigma, the California Junior College Honor Scholarship Society. For the past five years I have been a successful and respected public school teacher and am considered to be a leader in my district in the movement to improve and modernize mathematics curricula and instruction. Since becoming a teacher I have been the recipient of three National Science Foundation scholarships to do graduate study in this area. The most recent of these awards will provide support enabling me to continue this work on a full-time basis for the entire 1963-64 academic year.

The *Handbook* in my opinion is not pornographic. As I interpret our national standards, pornographic material has no social value or literary worth. Its basic characteristic supposedly is its tendency to weaken or destroy morality and social responsibility. The *Handbook* certainly does not fit such a description.

Defendants' Exhibit 62

No expert on what constitutes great literature, I am able to recognize superior writing ability, and Mrs. Anthony, the *Handbook's* author, writes with style and humor which a good many already popular authors would do well to equal.

The real value of the book, however, rests in its important educational aspects. As a father and teacher of young people I am especially impressed with how important a free flow of ideas is to the development and maturation of the young mind. One of Mrs. Anthony's main objectives in writing this book I feel was to make this point. Her description of her own developmental years shows the effect of keeping youngsters in ignorance of the facts. The language she employs is the language used secretly by most adolescents. The events she describes occur and have occurred among the young of every generation. By continuing her descriptions into her own adult life, the reader is shown the result of at least one such childhood.

Such a book has significant social value for both the expert in the theory of human relations and the amateur practitioner, the lay reader. Since education creates understanding, and understanding improves morality and social responsibility, any book which relates fact and stimulates serious thought, as this book does, cannot be considered worthless or pornographic.

Sincerely,

Robert K. Oldenburg
ROBERT K. OLDENBURG

Defendants' Exhibit 63, Annexed to Foregoing Affidavit

February 25, 1963.

Dear Mr. Ginzberg:

1. My training as a research worker in the field of medicine has included a B.S. in Biology from Rensselaer Polytechnic Inst., Troy, N. Y., MM. in Pharmacology from Univ. of Calif. at San Francisco, and a Ph.D. in Pharmacology from Northwestern U. Medical School in Chicago, Ill. I am at present a Research Associate in Experimental Medicine at the Univ. of Vermont, Burlington.

2. In my opinion, the intent of any written or printed matter as far as it can be ascertained should be the criterion as to what is "hard-core pornography".

3. In my opinion the "Handbook is not such hard-core pornography" as its primary purpose seems obviously not to excite but to convey information.

4. This information obviously is not easily obtained and hence is of great value.

Very truly yours,

H. C. HERRLICH.

Defendants' Exhibit 64, Annexed to Foregoing Affidavit

DR. HAROLD A. BLACK
Dentist
7267 South Exchange Avenue
Chicago 49, Illinois

Mar. 1, 1963.

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Sir:

Both my wife and I have just finished reading the Housewife's Handbook of Selected Promiscuity by Rey Anthony and would like to go on record as stating that in, our opinions, this book is not pornographic nor obscene. In fact, I would go so far as to say it should be *must* reading for married couples. Had my wife and I been able to read this early in our marriage, rather than our twentieth year, perhaps some of the problems of good sexual relations would not have come up.

There seems to be an inability to speak frankly about sex practices and modus operandi in our society, despite the very basic aspect of our sexual lives. Physicians and clergy were less than enlightening on the subject. Friends and relatives were under the same misapprehensions as my wife and I were. Since both of us came to the marital bed without prior experience, our first years were fumbling, groping attempts to find sexual gratification for both partners, hampered by the usual inhibitions and taboos.

There seem to be many idealized or romanticized concepts of sexual relations which are found in literature or movies, which concepts do not coincide with actual, real life occurrences. The debunking of these fallacious ideas

Defendants' Exhibit 65

has been long overdue, and I thank Mrs. Anthony for so doing. Three huzzahs and sincere thanks to Mrs. Anthony for speaking frankly, honestly and courageously. Perhaps I cannot condone the "numerical" aspects of her sexual life, and her rather casual references to her lovers, but this in itself does not render a book pornographic or obscene. This would, if it were pornographic, remove much literature from the bookshelves of the world.

In dealing with this unfortunately taboo subject of sex, if some of our supposedly enlightening texts were written in understandable language, and sexual practices, and yes methods, were made clearer, we might not today be drifting in a morass of half truths, misconceptions and frustrations. This book should not be suppressed; it should be publicized and be seen by all.

Sincerely,

Harold A. Black

HAROLD A. BLACK, D.D.S.

Defendants' Exhibit 65, Annexed to Foregoing Affidavit

HERBERT G. HAMILTON
1371 Commonwealth Ave.
Allston, Mass.

4 March 1963

Dear Mr. Ginzburg,

Thank you for your copy of *The Housewife's Handbook on Selective Promiscuity*.

I am sorry to say that I cannot act as a "high credibility source", on whether the HANDBOOK is or is not "hard-core pornography". My primary interest and training is in photography as an art form. For quite a while, however, I have had an interest in the artistic merits of so called

Defendants' Exhibit 65

"pornography" and "erotic realism" in sculpture, painting, writing, motion and still photography. I have included a bibliography of references (with some comments in parentheses) which may be of aid to you in fighting this travesty of justice to which you are being subjected.

Social scientists are continuously inserting such phrases as " * * * other factors are at work and must be examined before the situation can be properly examined". Schramm, W. ed. *The Process and Effects of Mass Communication*. Urbana, Ill., University of Illinois Press, 1954. p. 95). Social science (basically a pseudo-science anyway) has not been able to determine with any accuracy the standards of even a small sample of people in a relatively confined area (except in the most elementary and simple of experiments). It is my opinion that "contemporary national standards" cannot be measured, or even adequately guessed at, on such a complex topic as "pornography".

Although I do not believe the HANDBOOK is pornography I would like to point out a factor which may make it *appear* so. The prose style is very unpolished. This is to be expected in a diary but brings up immediate associations with coarseness. I admire the publisher for not trying to alter this basic honesty of approach, and take on the burden of a rather tiresome prose style.

Pornography depends primarily on fantasy. The HANDBOOK is so realistic that it almost appears to be a clinical report. It is for this reason that I don't consider it pornography.

The following are quotes from my wife in the discussion we had about the HANDBOOK:

"I wish that when I was so darn innocent I had gotten hold of a book like this".

"I wish I had kept a diary like this and written down some of the reactions I had with Andrew because it was quite a traumatic experience".

Defendants' Exhibit 65

"I would have been embarrassed about this book at one time but now I'm not. It's a matter of my maturing and changing attitudes".

"* * * down to earth approach but not well written".

"The approach seems to be what a mother should tell".

"It's said in the terms that children use".

"It's just a forthright presentation * * *"

"Obscene is a word that covers a very broad category that really doesn't cover anything".

My very best wishes for a successful outcome for you in the courts.

Sincerely yours,

Herbert G. Hamilton
HERBERT G. HAMILTON.

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th St.
New York 18, N. Y.

BIBLIOGRAPHY

The Holy Bible. Thomas Nelson & Sons, New York, 1952, "The Song of Solomon", pp. 703-708.

Costler, A. & Willy, A. (ed. Norman Haire), *Encyclopaedia of Sexual Knowledge*, Eugenics Publishing Co., New York, 1940. pp. 223-224.

(The pages noted bear a remarkable resemblance to the "erotic realism" of Mrs. Anthony's book.

Defendants' Exhibit 66

This is even more remarkable considering the "Encyclopedia" was published 23 years ago and was sent thru the mails.)

Lewinsohn, Richard. *A History of Sexual Customs*, Harper & Bros., New York, 1958.

Greenwald, Harold. *The Call Girl*, Ballantine Books, New York, 1958.

Chamdos, John. *A Guide to Seduction*, Frederick Muller Ltd., Great Britain, ().

Li Yu. *Jou Pu Tuan, A Seventeenth Century Erotic Moral Novel*, Grove Press, Inc., New York, 1963.

(The above two books purchased from Doubleday store on 5th Ave. near 52d St., New York, N. Y.)

Watts, Alan W. *Nature, Man and Woman*, Pantheon Books, Inc., 1958.

(" * * * a new approach to sexual experience * * * ")

Mead, Sheperd. *The Big Ball of Wax*, Ballantine Books, New York, 1954.

See also: Eichenlaub, John E. *The Marriage Art*, Dell Publishing Co., Inc., New York, 1961.

Defendants' Exhibit 66, Annexed to Foregoing Affidavit

February 28, 1963

Mr. Ralph Ginzburg
% Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

This is in answer to your request for a statement concerning our opinions on the quality and morality of the book entitled "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony.

Defendants' Exhibit 66

The book is mistitled. Why not use a title representative of the subject matter such as: *The Autobiography of an Intelligent Tramp*.

The book is not "hard-core pornography" or any other kind of pornography. It should, in our opinion, be unlawful to print it for general distribution however without an inclusion which analyzes the worth of the book and identifies the character and pathology of the author. This should be required to prevent the young and inexperienced from assuming *a priori* that the behaviour of the author was acceptable or lawful.

It seems a shame that after such a penetrating and superb account of her sex life that this highly intelligent Mrs. Anthony did not conclude her book with an attempted explanation of her psycho-sexual immaturity. Also a shame that she did not use this same brain, and gift of God, to point out the obvious: namely the chaotic consequences if her behaviour were repeated by a really significant fraction of society.

The *only* message we could detect in this book was Mrs. Anthony's recommendation that a more satisfactory vocabulary of sex be taught and used openly. With this we heartily agree. But, it is not adequately emphasized that this is needed most among decent honorable people and that our society is in error to encourage it only in ego-centric wanton's such as Mrs. Anthony and some of the associates she describes.

Part 2—Entitled "Miscellaneous Concepts"—contains grains of sense here and there but these are lost as one

141a

Defendants' Exhibit 67

soon realizes the author is merely demonstrating her admitted skill at mental masturbation.

Sincerely,

A. Kandel
ALEXANDER KANDEL, Ph.D.
6625 Newburgh Road
Evansville, Indiana

P. M. Lish
PAUL M. LISH, Ph.D
531 S. Benninghof Ave.
Evansville, Indiana

**Defendants' Exhibit 67, Annexed to Foregoing
Affidavit**

SPRINGFIELD COLLEGE
Springfield 9, Mass.

April 2, 1963

Mr. Ralph Ginzburg
c/o Documentary Books, Inc.
110 West 40th Street
New York 18, New York

Dear Mr. Ginzburg:

Our Library has just received Rey Anthony's *The Housewife's Handbook On Selective Promiscuity*. You asked for certain bits of information.

1. I have a Bachelor of Science, a Master of Arts, and a Ph.D. degree in psychology. I am currently an Associate Professor of Psychology, Chairman of the Department of Psychology, and Director of the Graduate Division of Guidance and Personnel Services at Springfield College. I am a member of the Massachusetts Psychological

Defendants' Exhibit 67

Association, the New England Psychological Association, the American Psychological Association, and the American Academy of Psychotherapists.

2. I really do not know what "by contemporary national standards" hard-core pornography consists of. I have not myself seen anything which I consider to be hard-core pornography, but I should imagine it to be those products which have as their avowed purpose the sexual excitation of the reader or viewer.

3. I do not consider *The Housewife's Handbook On Selective Promiscuity* to be hard-core pornography. Its purpose does not appear to be sexual excitation of the reader. Instead, it seems clearly to me to be a didactic piece of work.

4. I think that the book has potential value to society inasmuch as it is a frank expression of experience, which to one degree or another, must certainly be duplicated by many persons in our society and can consequently help people to understand one another and find support. More importantly, it teaches many much needed lessons about sexual acceptance, toleration and practice in a gentle form of indirect tuition that is much more persuasive than lectures delivered on the subject.

Sincerely,

Henry Paar

HENRY PAAR

Chairman, Psychology Department

HP:rel

Defendants' Exhibit 68, Annexed to Foregoing Affidavit

March 28, 1963

Mr. Ralph Ginzberg
c/o Documentary Books
110 West Fortieth Street
New York 18, New York

Dear Mr. Ginzberg:

You have asked me an opinion of Rey Anthony's book *The Housewife's Handbook on Selective Promiscuity*. I assume you wish a professional appraisal. I am an Assistant Professor of History at Colorado State University. I hold a BA and MA from the University of Virginia and a Ph. D. from the University of California. I regard myself as a social historian concerned with studying the manners and mores of America and although I specialize primarily in Early American history, I feel it is my duty to keep up with the whole sweep of our past, especially in this field of society, manners, and morality. I have, of necessity, read moderately widely in this field.

The court has held that hard core pornography must be judged "by contemporary national standards." Yet there is the problem of such standards varying from locality to locality and group social group to social group. One group ought not, whether it is a minority or a majority, be entitled to deprive another of its right to either expression or information. "Contemporary national standards" can only mean that which is acceptable in the United States. Obviously this book is acceptable to many people. It is certainly not "hard-core pornography" in the sense in which E. and P. Kronhausen so ably define the term in their *Pornography and the Law*. It would have been in the nineteenth century, but not so in the mid-twentieth. Its careful avoidance of obscene language, its avoidance of obscene detail, and its lack of the "obscene structure" as outlined by the Kronhausens prevents it from becoming

Defendants' Exhibit 69

so. I am almost tempted to describe the character of the book as "clinical" except that it uses language which is intelligible to the educated layman. I cannot see this work as an obscene or pornographic one. It is less so than many works which have been accepted today.

The *Handbook* actually could be of service to society in the United States. It provides an enlightened attitude toward sex in lay terms. It should impart needed information to segments of society which are denied this information. One need not accept every statement in a work to recognize that such works have value as a whole. If this were the case most accepted works would have to be discarded.

Sincerely,

CARLOS R. ALLEN, JR.,
Assistant Professor of History,
Department of History and Political
Science,
Colorado State University,
Fort Collins, Colorado.

Defendants' Exhibit 69, Annexed to Foregoing Affidavit

HAVERFORD COLLEGE
Haverford, Pa.

March 28, 1963

Mr. Ralph Ginsburg
Editor and Publisher
110 West 40th Street
New York 18, New York

Dear Mr. Ginsburg:

I have read *The Housewife's Handbook on Selective Promiscuity*. You ask for my judgment as to whether it is "obscene." Although a clinical psychologist, conversant

Defendants' Exhibit 69

with much clinical literature, I scarcely qualify as an "expert" of what is "obscene." To me, what is "obscene" depends both on the motivation of the author who writes a book and on the motivation of the reader who reads such a book.

From my viewpoint, the book is not obscene. In fact, I found it to be one of the most enlightening clinical case studies of a woman's reactions to sexual experience that I know of in the professional literature. I profited from reading this book and I would strongly protest any interference by governmental agencies to ban the distribution of such a work to professional persons. Certainly the content of the book is no more "pornographic" than other materials I read in professional literature and these materials have never yet been considered obscene.

The opinion above does not, of course, indicate that I agree with many of the author's viewpoints. I think such a work states as facts much that is only opinion. Certainly, I do not condone the thinly veiled attempt to defend, if not absolve herself, from what I would call very "unselective" promiscuous relations. Other portions of the book are equally objectionable, but when the work is taken as a whole, I still feel it to be a valuable and useful document of one woman's experiences.

But I must confess I am quite ambivalent about the distribution of the book to the general public. Certainly the book should be available to professional persons who must deal with persons such as the authoress and the experiences she relates. Professional people have the information (or know when such information is lacking) to evaluate the book's message critically. If I were the publisher of such a work, I would feel my responsibility quite heavily in deciding how to market the book and to what audience I would address my advertising. The singular focus on sexuality, mitigated only by the "idealized" (fictionalized?) relation at the conclusion of the book, casts

Defendants' Exhibit 69

interpersonal relationships into a mold only too readily portrayed in contemporary literature and drama. I have become seriously concerned about the possible effects of such recurring themes on the youth I must teach and I wonder how much such themes stimulate and encourage sexual and other forms of impulse expression long before such forms of expression can be integrated healthfully into our current social framework. I would not want my children to read this book. The book is for adults but unfortunately one cannot limit the distribution of books to adults as one can limit the attendance of children to movies and to the theater. This to me is the serious dilemma and ethical issue such a book raises.

Since I feel such a book should be limited to more professional persons, I hope the Post Office is wise enough not to make a court case about the book which would only advertise it to a much larger public and I hope you, as the publisher, will search your conscience and seek the wisdom of more experienced professional persons than I about how to market such a book so as not to add to the current overemphasis and exclusive centering on sexual expression that seems to dominate so much of our current youthful culture.

Sincerely,

Douglas Heath, Chairman
DOUGLAS HEATH, Chairman
Department of Psychology

DH:hw

I do not give my permission to have any portion of this letter used for advertising or promotional purposes.

cc Postmaster General, Post Office, Washington, D. C.

**Government's Motion to Strike Affidavit and Exhibits
Appended to Defendants' Motion to Dismiss Indictment**

The United States of America, by its attorneys, Drew J. T. O'Keefe, United States Attorney in and for the Eastern District of Pennsylvania, and Isaac S. Garb, Assistant United States Attorney for said District, moves the Court to strike defendants' affidavit and exhibits appended to defendants' Motion to Dismiss Indictment and as grounds therefore states as follows:

1. On or about the 17th day of April, 1963, defendants did present a certain Motion and Order for Dismissal of certain Counts of the Indictment in the above-captioned matter pursuant to Rule 12 of the Federal Rules of Criminal Procedure.

2. In conjunction with defendants' Motion, defendants did append an affidavit and 69 exhibits, raising certain questions of fact which are not presently a part of the record of this case.

3. Defendants have asked that the said questions of fact outside of the record be considered by the Court in determining whether the said Counts of the Indictment should be quashed.

4. In determining whether or not an Indictment may be quashed the Court may consider only the Counts of the Indictment themselves to determine, as a question of law, whether or not they are self-sustaining.

5. The Exhibits appended to defendants' Motion purport, in effect, to be a testimony of various persons, whose testimony has not been subjected to cross-examination by the Government but whose testimony the defendants request the Court to consider.

Stipulation, Dated May 8, 1963 and Order Approving Same

6. There has been no ground work laid by the defendants for the purported testimony of the persons named in defendants' Exhibits and therefore, no showing that these persons are qualified to testify with regard to current community standards.

/s/ Drew J. T. O'Keefe,
DREW J. T. O'KEEFE,
United States Attorney.
ISAAC S. GARB,
Assistant United States Attorney.

**Stipulation, Dated May 8, 1963 and Order
Approving Same**

AND NOW, to wit, this 8th day of May, 1963, it is hereby stipulated by and between Drew J. T. O'Keefe, United States Attorney in and for the Eastern District of Pennsylvania, J. Shane Creamer, Esquire, and Isaac S. Garb, Esquire, Assistant United States Attorneys, attorneys for the United States of America, and David I. Shapiro, Esquire, Sidney Dickstein, Esquire, and Norman A. Oshtry, Esquire, attorneys for defendants, and Ralph Ginsburg, Documentary Books, Inc., Eros Magazine, Inc., Liaison News Letter, Inc., which stipulation shall be in lieu of defendants' motion for bill of particulars and which stipulation shall be as follows:

1. Defendants' motion for bill of particulars is hereby withdrawn.
2. A copy of the alleged non-mailable material referred to in Counts 1 through 3 of the Indictment is annexed to this stipulation as Exhibit "A".
3. The advertising material annexed hereto as Exhibit "A" is not in and of itself alleged to be obscene under 18

Stipulation, Dated May 8, 1963 and Order Approving Same

U. S. C. § 1461, but it is the Government's theory of the case that it advertised where and how allegedly non-mailable material could be obtained.

4. A copy of the advertising material referred to in Counts 4 through 6 of the Indictment is annexed to this stipulation as Exhibit "B".

5. The advertising material annexed hereto as Exhibit "B" is not in and of itself alleged to be obscene under 18 U. S. C. § 1461, but it is the Government's theory of the case that it advertised where and how allegedly non-mailable material could be obtained.

6. A copy of the advertising material referred to in Counts 7 through 10 of the Indictment is annexed to this stipulation as Exhibit "C".

7. The advertising material annexed hereto as Exhibit "C" is not in and of itself alleged to be obscene under 18 U. S. C. § 1461, but it is the Government's theory of the case that it advertised where and how allegedly non-mailable material could be obtained.

8. The Indictment charges that the alleged non-mailable material, "The Housewife's Handbook of Selective Promiscuity," referred to in Counts 11 through 16 of the Indictment is obscene when considered as a whole.

9. The Indictment charges that the alleged non-mailable material, "Eros" Vol. 1, No. 4, 1962, referred to in Counts 17 through 22 of the Indictment is obscene when considered as a whole.

10. The Indictment charges that the alleged non-mailable material, "Liaison" Vol. 1, No. 1, 1962, referred to in Counts 23 through 28 of the Indictment is obscene when considered as a whole.

11. In all counts of the bill of Indictment in which "The Housewife's Handbook on Selective Promiscuity" and

Stipulation, Dated May 8, 1963 and Order Approving Same

"Eros" themselves or the advertisements pertaining thereto are involved, the defendants did knowingly mail or cause to be mailed the materials set forth in those counts on the dates set forth, fully knowing the contents of said materials.

12. In those counts of the bill of Indictment pertaining to "Liaison" itself, the defendants did knowingly mail or cause to be mailed the said materials on the dates set forth in those counts.

13. In those counts of the bill of Indictment pertaining to the advertising material relating to "Liaison" the defendants did knowingly mail or cause to be mailed the materials set forth in those counts on the dates set forth, fully knowing the contents of said materials.

14. The alleged non-mailable materials referred to in all counts of the Indictment are hereby considered a part of the Indictment as though fully set forth therein at length.

DREW J. T. O'KEEFE,
United States Attorney.

J. SHANE CREAMER,
Assistant United States Attorney.

ISAAC S. GARB,
Assistant United States Attorney.

DAVID I. SHAPIRO
SIDNEY DICKSTEIN
NORMAN A. OSHTRY
RALPH GINZBURG,
DOCUMENTARY BOOKS, INC.,
EROS MAGAZINE, INC.,
LIAISON NEWS LETTER, INC.,
By RALPH GINZBURG.

Approved and Ordered Filed This
8th Day of May , 1963.
/s/ RALPH C. BODY,
J.

**Order, Dated May 17, 1963 Striking Affidavit and
Exhibits Annexed to Defendants' Motion to
Dismiss Indictment**

AND NOW, to wit, this 17th day of May, 1963, in consideration of the motion of the United States of America to strike the affidavit and sixty-nine exhibits appended to defendants' motion to dismiss the indictment and also in consideration of oral argument on this day heard thereon, it is hereby

ORDERED that the said affidavit and sixty-nine exhibits annexed by defendants to their motion to dismiss the indictment are hereby stricken from the said motion.

/s/ RALPH C. BODY,
J.

May 17, 1963.

**Order, Dated May 23, 1963 Denying Defendants'
Motion to Dismiss Indictment**

AND NOW, this twenty-third day of May, 1963, upon consideration of the motion of defendants, Ralph Ginzburg, Documentary Books, Inc., Eros Magazine, Inc. and Liaison News Letter, Inc., and upon consideration of oral argument and briefs of respective counsel, IT IS ORDERED that the motion to dismiss be, and the same is hereby DENIED.

/s/ RALPH C. BODY,
J.

Excerpts from Testimony

* * *

[7] Mr. Shapiro: Yes, we propose to stipulate that the defendants did knowingly mail or cause to be mailed "Liaison," fully knowing the contents thereof, and we will stipulate that issue on the record.

I am doing that in order to try to speed up the trial.

Do you have any objections to that stipulation, Mr. Creamer?

[8] Mr. Creamer: I have no objection, Your Honor, but I reserve the right to put on any evidence as to intent that I feel fit to put on.

* * *

[13] GOVERNMENT'S EVIDENCE

Mr. Creamer: Mr. Rodgers, will you take the stand, please.

ARTHUR J. RODGERS, JR., having been duly sworn, was examined and testified as follows:

Direct examination:

The Witness: Your Honor, I would like to call your attention to Postal Manual Section 114.451.

The Court: What is it?

The Witness: I can not give information unless directed so by the Court.

The Court: You are directed to give that information.

By Mr. Creamer:

Q. By whom are you employed, Mr. Rodgers? A. United States Post Office Department.

Arthur J. Rodgers, Jr.—for Government—Direct

Q. And in what capacity are you employed? A. Postmaster.

Q. And of what are you postmaster; where is the location of the post office? A. I am postmaster of Blue Ball, Pennsylvania, in Lancaster [14] County.

Q. Did you receive a communication from Eros Magazine, Incorporated? A. Yes, I did.

Q. Did you bring that document with you today? A. Yes, I did.

Q. May I please have it.

(The witness handed a paper to Mr. Creamer.)

Mr. Creamer: If Your Honor please, I would like to have this marked for purposes of identification as Government's Exhibit No. 1.

The Court: Show it to defense counsel.

Mr. Creamer: Yes, sir.

The Court: I think the process we will follow, he will identify whatever you have.

Take it over to your table and look at it and then we will question the witness on it because there is no point in having both counsel come up each time.

Mr. Shapiro: Thank you, sir.

The Court: Because you will want to show it to your colleague, whatever it may be.

Mr. Creamer: Sir, would I show it before I have it marked, or after?

The Court: No, identify it first.

[15] Mr. Creamer: Thank you.

The Court: Merely say what it is, a letter from "A" to "B" or book, or whatever it is.

(Letter from Eros Magazine, Incorporated, to Postmaster, Blue Ball, Pennsylvania, dated October 18, 1962, was marked Exhibit G-1 for identification.)

Arthur J. Rodgers, Jr.—for Government—Direct

By Mr. Creamer:

Q. I show you Government's Exhibit No. 1. To whom is it addressed? A. Postmaster of Blue Ball, Pennsylvania.

Q. And what date appears on the letter? A. October 18, 1962.

Q. Did you receive this letter in the course of your business as postmaster? A. Yes, I did.

Mr. Creamer: If Your Honor please, I offer to place in evidence Government's Exhibit No. 1.

Mr. Shapiro: We have an objection on the grounds of relevance, Your Honor.

The Court: Objection?

Mr. Creamer: If Your Honor pleases, if you would hear me on relevancy, the contents of this letter will go as to the intent of Mr. Ginzburg and Eros, Incorporated, as to the dissemination of this material.

[16] The Court: Who signed the letter?

Mr. Creamer: It is signed by Frank R. Brady, Associate Publisher of Mr. Ginzburg. It is on Eros Magazine, Incorporated's stationery.

The Court: And your objection is—

Mr. Shapiro: It is in no way relevant to the particular issue or publication upon which the defendant has been indicted and in my view, even if there was an identification with respect to a particular issue, it would be of doubtful relevance in that event.

The Court: Anything else to say?

Mr. Creamer: If Your Honor pleases, there is a statement in this letter indicating that it would be advantageous to this publication to have it disseminated through Blue Ball, Pennsylvania, post

Arthur J. Rodgers, Jr.—for Government—Direct

office. I think this clearly goes to intent, as to what the purpose of publishing these magazines was. At least, it clearly establishes one of the reasons why they were disseminating this material.

The Court: Admitted.

Mr. Creamer: Thank you, sir.

(Exhibit G-1 received in evidence.)

By Mr. Creamer:

Q. Would you kindly read the first paragraph of that letter. A. "After a great deal of deliberation, we have decided [17] that it might be"—

The Court: Will you keep your voice a little higher? The fans are interfering with the acoustics in here.

The Witness: "After a great deal of deliberation, we have decided that it might be advantageous for our direct mail to bear the postmark of your city."

By Mr. Creamer:

Q. Did you reply to this communication? A. Yes, I did.

Q. Do you have your communication with you? A. No, I don't.

Mr. Creamer: No further questions.

Mr. Shapiro: No questions.

Mr. Creamer: Thank you, Mr. Rodgers. That's all.

Mr. Creamer: Take the stand, please, Miss Martin.

Bertha N. Martin—for Government—Direct

Miss Martin: Your Honor, I call your attention to Post Office Manual 114.532, which states that a postmaster may not give information unless directed to.

The Court: We have to first find out if you are a postmaster.

[18] BERTHA N. MARTIN, having been duly sworn, was examined and testified as follows:

Direct examination:

The Witness: Your Honor, I call your attention—

The Court: Just a minute. Sit down a minute. Ask the first question, please, her name and whether she is a postmaster or mistress.

By Mr. Creamer:

Q. Your name again, please? A. Bertha N. Martin.

Q. By whom are you employed? A. United States Post Office.

Q. And in what capacity are you employed by the United States Post Office? A. I am a postmaster.

Q. Where are you a postmaster? A. At Intercourse, Pennsylvania.

Q. Did you receive a communication from Eros Magazine?

The Court: Just a moment.

Now you may make your declaration. Make it, please, for the record.

The Witness: I call your attention to Postal Manual 114.532, which states a postmaster may not

Bertha N. Martin—for Government—Direct

give information [19] unless so directed by the court.

The Court: I direct you now to give that information.

The Witness: Thank you.

The Court: Proceed, please.

By Mr. Creamer:

Q. Mrs. Martin, I show you a letter dated September 4, 1962, on Eros stationery directed to the postmaster at Intercourse, Pennsylvania, and ask you, did you receive that in the ordinary course of your business? A. I did.

Mr. Creamer: If Your Honor please, I request that that be marked Government's Exhibit No. 2 for purposes of identification.

(Letter from Eros Magazine, Incorporated, to Postmaster, Intercourse, Pennsylvania, dated September 4, 1962, was marked Exhibit G-2 for identification.)

Mr. Creamer: If Your Honor please, I offer in evidence Government's Exhibit No. 2.

Mr. Dickstein: No objection.

Mr. Shapiro: Excuse me, Your Honor, just a moment. There is an objection to the admission of this letter on the grounds as the prior one. I just want to state that.

[20] The Court: Co-counsel had better agree on that.

Mr. Dickstein: We agree, Your Honor.

The Court: Offered by the Government and admitted.

(Exhibit G-2 received in evidence.)

Bertha N. Martin—for Government—Direct

By Mr. Creamer:

Q. Mrs. Martin, I show you Government's Exhibit No. 2 and I request you to read the first paragraph of that letter from Eros Magazine, Incorporated. A. "After a great deal of deliberation we have decided that it might be advantageous for our direct mail to bear the postmark of your city."

Q. Did you respond to that letter? A. Yes, I did.

Q. I show you a letter dated September 8, 1962, a carbon of a letter to Eros Magazine, Incorporated. Is this the letter that you sent in response to that initial letter? A. Yes, it is.

Mr. Creamer: If Your Honor please, I would like to have this marked for purposes of identification as Government's Exhibit No. 3.

(Carbon copy of letter dated September 8, 1962, from Bertha N. Martin, Postmaster, Intercourse Pennsylvania, to Eros Magazine, Incorporated, was marked Exhibit G-3 for [21] identification.)

Mr. Creamer: If Your Honor please, I move that this be offered in evidence. It is the postmaster's answer to Eros Magazine, Incorporated, dated September 8, 1962.

Mr. Shapiro: Same objection.

The Court: Let me see the letter.

(Mr. Creamer handed the exhibit to the Court.)

The Court: Admitted.

(Exhibit G-3 received in evidence.)

By Mr. Creamer:

Q. Mrs. Martin, would you kindly read that letter to Eros. A. "I acknowledge receipt of your recent letter concerning the bulk mailings.

Robert W. Sanders—for Government—Direct

"I must inform you that our office is very small and our equipment and facilities are limited. So, in view of this, I feel we are not able to handle mail in such a volume.

"Bertha N. Martin
"Postmaster"

Mr. Creamer: Thank you, Mrs. Martin. No further questions.

Mr. Shapiro: No questions.

Mr. Creamer: That's all, Mrs. Martin. Thank you very much.

[22] Mr. Creamer: Mr. Sanders, please.

The Court: Mrs. Martin, did you take the exhibit along down?

The Witness: Yes.

The Court: Would you leave it up here with the clerk of the court?

Thank you.

Mr. Creamer: Thank you, Your Honor.

ROBERT W. SANDERS, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Creamer:

Q. Mr. Sanders, by whom are you employed? A. I am employed by the United States Post Office Department.

Q. In what capacity are you employed? A. Postmaster of Middlesex, New Jersey.

Q. Did you have a privilege you wished to exercise?

A. Do you want to ask me any more questions, sir?

Robert W. Sanders—for Government—Direct

Your Honor, I would like to call your attention to Postal Manual 114.532 in regard to that I am not allowed to divulge information of the Post Office Department unless so directed by the Court.

[23] The Court: You are directed to answer in this court.

The Witness: Thank you, sir.

By Mr. Creamer:

Q. You are a postmaster at Middlesex, New Jersey; is that correct? A. Yes, sir.

The Court: Just a moment. Is that one or two words, Middlesex?

The Witness: One word, sir.

The Court: Spell it.

The Witness: M-i-d-d-l-e-s-e-x.

By Mr. Creamer:

Q. As part of your duties as postmaster in Middlesex did you handle certain mailings with regard to Eros Magazine, Incorporated? A. Yes, sir.

Q. Could you give us a summary of the Eros Magazine mailings? A. On the 13th of August, Eros Books, Incorporated, 110 West 40th Street, New York—

The Court: What year?

The Witness: 1962, sir.

The Court: Thank you.

The Witness: —requested through a mail-order [24] house, a patron of Middlesex Post Office, an application to mail without affixed postage.

Robert W. Sanders—for Government—Direct

By Mr. Creamer:

Q. Did they receive a permit? A. The permit was issued on August 14, 1962, permit No. 8. They started to mail on October 7 and have continued to mail up to the present time.

Q. Do you know how many pieces of 3rd-class bulk mail were sent out through Middlesex by Eros Magazine, Incorporated? Do you have any idea of the number? A. Yes, I do, sir. The approximate total pieces of 3rd-class bulk mail was 5,053,884 pieces.

The Court: The number, 5,053,000—

The Witness: 5,053,884 pieces.

By Mr. Creamer:

Q. Of your own knowledge, do you know whether they were advertisements for Eros or whether or not they were the magazines themselves? A. They were the advertisements for Eros, sir.

Q. Do you know how much it cost to send those 5,000,000-some advertisements out? A. The cost of that mailing was \$132,704.93.

Q. Do you know the total pieces of all classes of mail that was sent by Eros Magazine, Incorporated, with regard to Eros? [25] A. The total pieces of all classes of mail was 6,067,573.

Q. And what was the cost for all classes of mail for Eros advertisements? A. The total postage for all classes of mail was \$163,438.48.

Q. Now, with regard to Documentary Books, when did you receive an application to mail without affixing postage stamps for Documentary Books? A. On November 20, 1962, Documentary Books, Incorporated, requested through

Robert W. Sanders—for Government—Cross

the mail-order house, a patron of Middlesex Post Office, an application to mail without affixed postage.

Q. Was a permit issued? A. The issue of the permit, No. 8, was November 20.

Q. How many books did you receive for shipment of "The Housewife's Handbook on Selective Promiscuity"? A. Total number of pieces were 5,543.

Q. Did you have any contact with Liaison News Letter, Incorporated? A. Liaison Letter, Incorporated, mailed through my post office 1st-class mailings, sir. I have a letter, sir, from the mail-order house in one case telling me of how many they were mailing that day, and I also have only on my file copies the amount of 1st-class letters which could consist of the three different outfits.

[26] Mr. Creamer: I have no further questions.

Mr. Shapiro: We have some cross-examination, sir.

The Court: Mr. Dickstein, it is not necessary for you to rise in this court unless you choose to do so.

Mr. Dickstein: I sometimes prefer to do so.

The Court: You may.

Mr. Dickstein: I can see over the heads and see the witness better in this case.

The Court: The choice is with you.

Mr. Dickstein: Thank you.

Cross-examination by Mr. Dickstein:

Q. Mr. Sanders, did you say you were the Postmaster of Middlesex, New Jersey? A. That's right, sir.

Q. This mail order house that you referred to, do you know the name of this mail order house? A. This mail order house comes under a number of names depending on whom they mail for. In the case of the mailing of Eros it was the General Mailing Corporation.

Robert W. Sanders—for Government—Cross

Q. And are you familiar with the General Mailing Corporation? A. Yes, sir.

[27] Q. Is it not a fact, Mr. Sanders, that the General Mailing Corporation is one of the largest mailing houses in the United States? A. You would have to repeat that question. I missed part of it, counsel.

Q. I said, is it not a fact that the General Mailing Corporation is one of the largest mailing houses in the United States. A. It would be a little hard for me to answer, sir. I don't know about other mail order houses. I know it is very large.

Q. Are you familiar with the amount of mail that this mailing house places through the Middlesex Post Office? A. I have it on record, yes, sir.

Q. Could you give me an approximate or an exact figure of the amount of the total mail handled in one year by General Mailing Corporation? A. It would be an absolute guess, sir.

Q. I don't want an absolute guess. You have no idea? A. Not unless I go into my records, sir. They mail continuously every day and mail for four or five—

Q. Is it substantial? A. Yes, sir.

Q. Is a mailing of five million pieces an extraordinary [28] mailing for the General Mailing Corporation? A. Are you speaking—

Q. Over a period of time. A. Over a period? Yes, sir, it is a little large.

Q. Is the General Mailing Corporation big enough to have its own sub-post office station in its own plant?

Mr. Creamer: I object, Your Honor. I think we are getting pretty far afield.

Mr. Dickstein: Your Honor, as I understand the purpose of Mr. Creamer's testimony, it was to show there is something a little offensive in using the

Robert W. Sanders—for Government—Cross

post office at Middlesex, New Jersey, and I am trying to demonstrate not only is it not offensive, but the General Mailing Corporation is one of the largest mail order houses in the eastern United States.

The Court: It goes beyond the scope of the direct but I will permit the question.

By Mr. Dickstein:

Q. Would you answer my last question?

(The question was read.)

A. I would have to answer that, sir, that we have a substation in that plant that handles all of the mail from that plant which consists of eight or nine different companies.

Q. They are all affiliates, are they not? [29] A. Yes, sir.

Q. Does that particular post office substation handle any general mail, that is, mail from the general public? A. No, sir, only from this one corporation.

Mr. Dickstein: No further questions.

Mr. Creamer: I have no questions, Your Honor. Thank you. That's all, Mr. Sanders.

Mr. Creamer: Mr. McDermott.

HUGH J. McDERMOTT, SWORN.

Mr. Creamer: If Your Honor please, in order to expedite things at this time I would like to have marked as exhibits and offer in evidence the various

Robert W. Sanders—for Government—Cross

advertisements that are in the indictment, and I think if we could have just a minute we might be able to stipulate and do it quite quickly.

The Court: All right. Relax a minute, Mr. McDermott. We will see what happens.

(Discussion off the record at counsel table.)

Mr. Creamer: If Your Honor please, I would like to have this marked as Exhibit B to the stipulation since the stipulation doesn't identify them with particularity [30] but it does identify them generally, and I would like to have them marked. There are 10 advertisements which are the ones that are in the indictment.

The Court: What do you want to have them marked?

Mr. Creamer: I would like to have them marked as Exhibit "B" to the stipulation.

The Court: We had better mark them in the order in which we have them. They are not in the stipulation and these are something separate and apart from the stipulation. As far as I am concerned I direct they be marked, each one separately.

Mr. Creamer: Very well.

Mr. Shapiro: If Your Honor please, before they are marked I was under the impression, though I may be mistaken, that they were annexed to the stipulation prior to its filing with the Court.

The Court: If they were annexed then that would be proper.

Mr. Shapiro: That's right.

The Court: We don't need to have them marked if they were annexed. It is my impression they were not annexed.

Mr. Shapiro: I did not know that.

Exhibits Marked for Identification

[31] Mr. Creamer: They were never annexed, Your Honor, unfortunately.

The Court: We are not pushed so much for time that we have to do that in two minutes. It is important to everybody and we are going to take our time. We will have to do this in what we think is the proper way.

Mr. Creamer: If Your Honor please, I request to mark as Government's Exhibit No. 4 an advertisement for Documentary Books, Incorporated, directed to Dona Tobin, 520 Willow Grove Avenue, Philadelphia, Pennsylvania.

The Court: What is the name of the person?

Mr. Creamer: Dona Tobin.

The Court: From whom, Documentary Books?

Mr. Creamer: It is from Documentary Books, Incorporated, an advertisement for that publication. I request it be marked as Government's Exhibit No. 4.

(Envelope and enclosure from Documentary Books, Inc., to Dona Tobin was marked Exhibit G-4 for identification.)

Mr. Creamer: And another advertisement from Documentary Books, Incorporated, to Wilbur J. B. Ingham, 1010 Winchester Street, Philadelphia 11, Pennsylvania. I request that that be marked as Government's Exhibit No. 5.

(Envelope and contents from Documentary Books, [32] Inc., to Wilbur J. D. Ingham was marked Exhibit G-5 for identification.)

Mr. Creamer: An advertisement from Documentary Books to Russell N. Leidy, 209 James Drive, Wynne Glade, Havertown, Pennsylvania. This, too,

Exhibits Marked for Identification

is an advertisement from Documentary Books, and I request that it be marked as Government's Exhibit G-6.

(Envelope and contents from Documentary Books, Inc., to Russell N. Leidy was marked Exhibit G-6 for identification.)

Mr. Creamer: An advertisement for Liaison News Letter directed to Lisette R. Peters, 111 Chapel Road, New Hope, Pennsylvania. I request that this advertisement of Liaison be marked Government's Exhibit 7.

(Envelope and contents from Liaison to Lisette R. Peters was marked Exhibit G-7 for identification.)

Mr. Creamer: An advertisement for Liaison News Letter directed to Miss Mamie Foery, 6 East Mercer Avenue, Havertown, Pennsylvania. I request that this advertisement of Liaison be marked G-8.

(Envelope and contents from Liaison to Miss Mamie Goery was marked Exhibit G-8 for identification.)

Mr. Creamer: Another Liaison advertisement directed to Eleanor Call Ahan, 9 South Valley Road, Paoli, [33] Pennsylvania. I request that this Liaison advertisement be marked Government's Exhibit 9.

(Envelope and contents from Liaison to Eleanor Call Ahan was marked Exhibit G-9 for identification.)

Mr. Creamer: An Eros advertisement directed to the Reverend John E. Greening, Burholme Baptist Church, 905 Cottman Avenue, Philadelphia 11,

Exhibits Marked for Identification

Pennsylvania. I request that this Eros advertisement be marked G-10.

(Envelope and contents from Eros to Reverend John E. Greening were marked Exhibit G-10 for identification.)

Mr. Creamer: A second Eros advertisement directed to Mother Mary Martha, Rosemont College, Rosemont, Pennsylvania. I request that that Eros advertisement be marked as Government's Exhibit 11.

(Envelope and contents from Eros to Mother Mary Martha were marked Exhibit G-11 for identification.)

Mr. Creamer: An Eros advertisement directed to Tom Kaufman, 118 Westminster Street, Chester, Pennsylvania. I request that that be marked Government's Exhibit 12.

(Envelope and contents from Eros to Tom Kaufman were marked Exhibit G-12 for identification.)

Mr. Creamer: And finally an Eros advertisement directed to Ogontz Junior High School, High School Road [34] and Montgomery Avenue, Elkins Parks, Pennsylvania, and I request that that Eros advertisement be marked Government's Exhibit 13.

(Envelope and contents from Eros to Ogontz Junior High School were marked Exhibit G-13 for identification.)

The Court: That's ten, Mr. Creamer?

Mr. Creamer: Pardon me, sir?

The Court: Ten?

Mr. Creamer: Yes, sir.

Exhibits Marked for Identification

At this time I request that Government's Exhibits G-4 to G-13 which are the advertisements for all three of these publications and which appear in the indictment be admitted in evidence.

The Court: That's the envelope as well as the contents thereof?

Mr. Creamer: That's correct, Your Honor.

Mr. Shapiro: May I inquire the purpose of offering them, Your Honor?

The Court: You may.

Mr. Shapiro: I so inquire.

Mr. Creamer: If Your Honor pleases, these advertisements appear in the counts of the indictment so I think they are very material to the trial of this case, [35] and also at a later time we will ask the Court to read these advertisements and we will make an argument on the basis of what is offered by these advertisements, so they are a material part of the record, and in part they will go toward intent.

The Court: Mr. Shapiro.

Mr. Shapiro: Well, on intent, Your Honor, unless there is any testimony connected, how the addresses were selected, we would like to inform the Court that we are going to make a very vigorous objection.

Mr. Creamer: If Your Honor pleases, the stipulation establishes that they agree that they knowingly mailed these advertisements. I don't understand this objection at this time. We did away with it. We stipulated on the basis that we wouldn't have to bring these people in. Now, if they want us to bring them in we will have to bring them in, but that's what they stipulated to, that they knowingly mailed these advertisements.

Colloquy of Court and Counsel

The Court: I believe that both of you are talking about different matters.

Mr. Shapiro: Exactly.

The Court: Mr. Shapiro, what were you going to say?

Mr. Shapiro: I think the whole point is this, [36] and this is the thing we are trying to make clear, there is no question about the fact that we mailed some six million advertisements.

The Court: Well, I believe that Mr. Creamer thought that your objection was to another matter. Maybe I am wrong. I don't know.

Mr. Shapiro: I think I know very well—

Mr. Creamer: Is he objecting to an alleged class of people?

The Court: I don't know.

Mr. Creamer: I don't understand his objection, I am afraid.

Mr. Shapiro: I will reserve my objection, Your Honor, and see the nature of the testimony with respect to the particular addressees. We have no question—

The Court: What we will do, then, Mr. Shapiro, is, they have been offered in evidence now. We will admit them and you, sir, may make a motion to strike whenever you choose.

Mr. Shapiro: Thank you, Your Honor.

I haven't seen the outside of the envelopes, Mr. Creamer.

(Mr. Creamer handed the exhibits to Mr. Shapiro.)

[37] The Court: I would like to have you repeat for me: You said you admit mailing over 600 pieces of mail similar to that?

Mr. Shapiro: Six million, Your Honor.

Colloquy of Court and Counsel

The Court: Similar to what you have in your hand?

Mr. Shapiro: Yes sir.

The Court: All right.

Mr. Shapiro: Our objection goes to the markings on some of these envelopes.

The Court: What do you mean, markings?

Mr. Shapiro: The added notations which were not a part of the exhibited material.

The Court: Added notations?

Mr. Shapiro: For example, G-13.

The Court: You mean an added notation in pencil or ink?

Mr. Shapiro: Yes, sir.

The Court: The Court will not consider any added notation and you may move to strike that immediately. I have not seen it, but it is not part of this case.

Mr. Creamer: I will also request that you not consider any added notations.

The Court: If you want to strike it out so I [38] cannot see it, since I am both Court and Jury, I would be happy to have you do it. I will not consider any writings on the outside.

Mr. Creamer: No, sir. We are not asking that you do.

The Court: Extraneous matter is absolutely no part of this case.

(Exhibits G-4 through G-13, formerly marked for identification, were received in evidence.)

Direct examination by Mr. Creamer:

Q. Mr. McDermott, by whom are you employed? A. The Post Office Department.

Hugh J. McDermott—for Government—Direct

Q. In what capacity are you employed? A. I am a postal inspector.

Q. How long have you been a postal inspector? A. 12 years.

Q. Did you investigate this case?

The Witness: Your Honor, again I would like to call your attention to 114.451 of the Postal Manual which directs me to refrain from answering any questions unless specifically directed to do so by you.

The Court: You are directed to answer the questions propounded by counsel unless I rule you should [39] not answer them.

By Mr. Creamer:

Q. When did you first begin to investigate this case? A. The exact date I cannot recall but it was within days after the first mailing of Eros at Middlesex, New Jersey.

Q. Why did you investigate the case? A. I was assigned the investigation by my superiors to determine if there was a violation of the postal obscenity statutes.

Q. As part of your investigation did you receive certain complaints with regard to any of these publications?

Mr. Shapiro: That's objected to, Your Honor, as clearly irrelevant.

The Court: Objection sustained.

Mr. Creamer: I have no further questions, Your Honor.

Mr. Dickstein: No questions, Your Honor.

Mr. Creamer: Mr. Darr, please.

Jack Darr—for Government—Direct

JACK DARR, SWORN.

Direct examination by Mr. Creamer:

Q. What is your full name please? [40] A. Full name, John Willis Darr.

Q. Where are you from, Mr. Darr? A. New York City.

Q. Have you ever heard of Liaison News Letter, Incorporated? A. Yes.

Q. When did you first hear of Liaison News Letters, Incorporated? A. In late September or early October of last year.

Q. And what is your occupation, Mr. Darr, generally? A. I am a writer.

Q. A writer? And how long have you been a writer? A. 12 years.

Q. Now, when you first heard of Liaison News Letter, Incorporated, you indicated it was in September of 1962?

The Court: Or October, he said.

By Mr. Creamer:

Q. Or October? Would you indicate what happened at that time? A. At that time an employment agency referred me to the Eros offices where I was offered a job with the Liaison News Letter.

Q. You did go to the offices of Eros and Liaison? A. Yes, sir.

Q. And were you interviewed? [41] A. Yes.

Q. Who interviewed you when you first went there? A. Originally I was interviewed by a man named Warren Boroson.

The Court: I didn't hear it.

The Witness: Warren Boroson, B-o-r-o-s-o-n.

Jack Darr—for Government—Direct

By Mr. Creamer:

Q. What happened at that interview? A. It was an initial interview. I gave him my resume. We talked and that was all. He said he would pass the word along.

Q. What happened after that? A. Subsequently I received a postcard, I believe, from Mr. Ginzburg inviting me to submit some samples of my material, of work that I had done in the past.

Q. Did you then submit samples of material that you had written in the past? A. Yes, sir.

Q. Then what happened? A. Then he interviewed me.

Q. Who is "he"? A. Mr. Ginzburg.

Q. And do you know about what time that was, what month? A. It all took place within a week of the time I first [42] heard of Liaison.

Q. I see. A. When the employment agency sent me there.

Q. And what took place at this first interview with Mr. Ginzburg? A. It was a friendly chat. Liaison had not yet been started. There was really nothing to go on.

Q. Did he indicate to you what position you were going to fill, what you were going to do? A. I am sorry, excuse me.

Q. Did he indicate to you what position you were going to have or what you were going to do with regard to Liaison? A. He was looking for an editor and writer for Liaison.

Q. Did he tell you anything about the purpose or scope of Liaison? A. He asked me if I knew about Eros. I said, Yes, I had seen some copies, and that Liaison was to cover the same scope, in a more newsworthy fashion.

Q. Did he tell you anything else about your duties at that time, at the first interview? A. No, not that I can think of.

Jack Darr—for Government—Direct

Q. Did he hire you at that time? A. No, I don't believe so. I think it was on the second interview that he hired me.

[43] Q. Did he ask you to submit any other writings at the time of the first interview? A. No, I had submitted several pieces. Yes, he did. He asked me to write a sample piece perhaps for Liaison.

Q. And this was before you were hired? A. That's right.

Q. And did you write a sample piece for Liaison? A. Yes, a rough sample piece.

Q. And what was the title of the rough sample piece that you wrote, if you recall?

Mr. Shapiro: I am going to object to that as irrelevant.

The Court: Overruled.

The Witness: That means I answer the question?

The Court: Yes, sir.

A. "How To Run A Successful Orgy."

The Court: "How To Run A Successful"—

The Witness: "Orgy."

By Mr. Creamer:

Q. Did it ever subsequently appear in Liaison News Letter? A. In a revised form.

The Court: You will have to keep your voice up a little bit.

[44] The Witness: I am sorry, sir.

The Court: Because your voice sort of doesn't carry over my way.

It appeared in a revised form?

Jack Darr—for Government—Direct

The Witness: In a revised form.

Mr. Creamer: I request that Volume 1, No. 2 of Liaison News Letter dated December 1, 1962 be marked as Government's Exhibit 14.

(Volume 1, No. 2, Liaison News Letter, December 1, 1962 was marked Exhibit G-14 for identification.)

Mr. Shapiro: I have seen it. Do you want to offer it? I have an objection.

Mr. Creamer: If Your Honor please, I would like to offer this Government's Exhibit G-14 in evidence at this time.

Mr. Shapiro: I have an objection unless every other issue of Liaison subsequent to this one also goes into evidence.

Mr. Creamer: Your Honor, I have no objection to that, but I think he can put it in in his case.

Mr. Shapiro: I didn't hear the last thing you said.

Mr. Creamer: I said I have no objection to all the editions of Liaison going into evidence but I think [45] if he wants them in he should put them in in his case.

Mr. Shapiro: I think it is part of your case.

The Court: We will have to rule on the matter before the Court now, and that is the one I have here in my hand which I assume is part of the indictment? It is Volume 1, No. 1.

Mr. Creamer: That's right, Your Honor, and this is Volume 1, No. 2, and in this edition appears the article, "How To Run A Successful Orgy." Although it is not in the same form that this man submitted it, he submitted it in order to be hired by Mr. Ginzburg and we contend that this goes toward intent once again.

The Court: Objection sustained.

Jack Darr—for Government—Direct

By Mr. Creamer:

Q. Did you submit a draft on "How To Run A Successful Orgy"? A. Did I submit a draft?

Q. Did you submit it to Mr. Ginzburg? A. Not directly, no. I submitted it to the offices.

Q. Were you called back? A. Yes. Actually, I was hired over the telephone. Mr. Ginzburg phoned me and said, "When can you start to work?"

Q. Did Mr. Ginzburg say anything about what he thought [46] about "How To Run A Successful Orgy"? A. No, he didn't.

Q. Then you started to work with Liaison? A. That's correct.

Q. And would you describe generally the manner in which you operated as editor of Liaison? A. I inherited quite a collection of magazines, Newspapers, clippings, various notes which I then compiled, searched through, finished and researched and tried to make a news letter out of it. That's all I can say.

Mr. Creamer: I request that this be marked for identification as Government's Exhibit G-15. It is a white envelope with a notation "Used Liaison Stuff," and a number of articles, clippings and paraphernalia inside.

(White envelope marked "Used Liaison Stuff" and contents were marked Exhibit G-15 for identification.)

Mr. Shapiro: Are you going to offer it?

Mr. Creamer: Yes.

Mr. Shapiro: Make your offer.

Mr. Creamer: Just a minute. I will have it identified first by Mr Darr.

Jack Darr—for Government—Direct

By Mr. Creamer:

Q. Mr. Darr, is this the paraphernalia that was given to [47] you as reservoir material? A. I don't know. I have never seen it before.

Q. Would you study the contents? A. I would say from a quick glance that I have seen parts of this before, yes. It was partially—

Q. Can you identify it as the information you just testified to that was given to you by Mr. Ginzburg as the reservoir material for future editions of *Liaison*? A. No, I can't identify it as the stuff that Mr. Ginzburg gave me because it has been a long time and some of it I haven't seen and we would have to go through it piece by piece.

Q. All right. Thank you. A. I can identify one thing there as a thing I wrote.

Mr. Creamer: If Your Honor pleases, I would like to have *Liaison*, Volume 1, No. 1, marked for purposes of identification as Government's Exhibit G-16.

(Volume 1, No. 1, *Liaison News Letter*, November 17, 1962, was marked Exhibit G-16 for identification.)

Mr. Creamer: If Your Honor pleases, I would like to offer in evidence Government's Exhibit G-16 which is Volume 1, No. 1 of *Liaison News Letter*.

The Court: That's the item with which we are concerned in the indictment?

[48] Mr. Shapiro: No objection, Your Honor.

The Court: Admitted.

(Exhibit G-16, formerly marked for identification, was received in evidence.)

Jack Darr—for Government—Direct

By Mr. Creamer:

Q. Mr. Darr, directing your attention to the first issue of Liaison News Letter as to the statement of policy which appears on the first page, did you write that statement of policy? A. Yes.

Q. Did you at any time have any discussion with Mr. Ginzburg concerning the statement of policy? A. Concerning this particular statement of policy?

Q. Yes. A. No.

Q. You never showed it to him? A. I put it as was done with all the copy in a basket on the desk in the front office and from there it was transported up to his office upstairs and I would get it back on my desk the next day as a rule. That was the process.

Q. But you never had any specific discussion with Mr. Ginzburg concerning that statement of policy as to his reaction to it? A. As I remember it he might have made a passing remark, [49] you know, "It is all right," or something like that or "It is good."

Q. Did he say it was good? A. As I say, in passing he might have, because he was a very busy man. He was running around and he passed by.

Mr. Dickstein: Objection. Your Honor, the witness appears to be testifying to what is in the realm of possibility and not within his own knowledge.

The Court: You may answer the question if you know. If you don't know, of course, you can't tell.

The Witness: I am trying to answer the questions to the best of my ability, Your Honor.

The Court: All right. We have no jury here. Go ahead.

If you have any further objection you may make it.

Jack Darr—for Government—Direct

By Mr. Creamer:

Q. Now, with regard to the article, "Slaying The Sex Dragon," did you write that article? A. No, I didn't.

The Court: Is that in the same number?

Mr. Creamer: Yes, sir, it is in Volume 1, No. 1.

The Court: What page?

[50] Mr. Creamer: Page 2, I believe, page 2.

The Court: Page what?

Mr. Creamer: Page 2.

The Court: At the top?

Mr. Creamer: Yes, sir.

The Court: Yes.

By Mr. Creamer:

Q. How about the article appearing on page—

The Court: What was the answer?

Mr. Creamer: He did not write that, sir.

By Mr. Creamer:

Q. How about the article appearing on page 4, "Semen In The Diet"? A. Yes, I wrote that except for the quotes which came from the Journal of the Medical Association.

Q. And did you at any time have a conversation with Mr. Ginzburg as to reaction to that article which you called "Semen In The Diet"? A. No, I don't remember so. I remember talking with other people in the office about it. I was new and I wanted to try to get the feel of the organization. I did not know whether it would be acceptable or not. I asked one of the people to read it. They said they liked it so I submitted it to Mr. Ginzburg's basket.

Jack Darr—for Government—Direct

[51] Q. Did it come back to you approved? A. It came back with very little, if any, changes on it. Actually, if you read it you will see that it is mostly quotes from the Journal of the American Medical Association.

Q. Directing your attention to page 5 to the article "Sing A Song Of Sex Life," was that written by you? A. Yes.

Q. Did you ever have any discussion with Mr. Ginzburg about his reaction to that particular article? A. Yes, I think he liked one line in there.

Q. Pardon me? A. Yes, I think there was one line that he liked.

Q. And which line was that? A. "The professors have crawled out of the dust and discovered lust." I think I either brought it to his attention or somehow I remember we discussed that line.

Q. How much did you receive in salary from Liaison? A. \$7500 a year.

Q. Did Mr. Ginzburg ever give you instructions with regard to the last page of Liaison, any general instructions on what was to be done concerning the last page? A. The last page unfolds like so, should not contain any four-letter words.

Q. Why, did he tell you why? [52] A. No.

Mr. Creamer: No further questions.

The Court: Just a moment, please. It will be impossible to identify on the record the answer, when it was folded like so, unless you indicate to the court stenographer how you had it. Will you really fold the letter and explain how you had it folded?

The Witness: It is folded as it goes through the mail with the address on one side and the printed matter on the other, so that this printed matter is exposed to any postman or secretary or whoever might want to read it.

Jack Darr—for Government—Cross

Is that sufficient. Your Honor?

The Court: I have in my hand an item which shows on the one side the place where one's address can be put.

The Witness: That is right, sir.

The Court: And on the other side an order blank, and then on the other side merely "Liaison."

The Witness: Sir, it is folded thusly. I think you have it in the inverse.

The Court: So that what would be exposed would be the part—

The Witness: It would be the last half of page 6.

[53] The Court: The last half of page 6 which would be the part beginning with "(3) She was only a wrestler's daughter"—

The Witness: Yes, sir.

The Court: And ending with "'Make your way—the hour is passing'."

The Witness: Yes, sir.

The Court: All right.

Mr. Creamer: The Government has no further questions, Your Honor.

Mr. Shapiro: We have got two, Your Honor. Just a moment.

Cross-examination by Mr. Dickstein:

Q. Mr. Darr, did Mr. Ginzburg tell you that the purpose of avoiding four-letter words on that panel was to prevent the Post Office from being aware of the material that is contained in this publication? A. Not at all.

Q. In fact, this material was not mailed in sealed envelopes, was it? A. I don't know how it was mailed.

Q. Mr. Darr, are you still employed by Liaison? A. No, sir.

Jack Darr—for Government—Cross

[54] The Court: I can't hear you, sir.

The Witness: No, sir.

The Court: I mean I can't hear you.

Mr. Dickstein: The question was, "Are you still employed by Liaison?"

The Witness: No, I am not.

By Mr. Dickstein:

Q. When was your employment terminated?

Mr. Creamer: If Your Honor please, I object. This is exceeding the scope of the direct examination.

The Court: Objection overruled. Exception noted.

A. My employment was terminated there, I guess it was, in November of that same year.

By Mr. Dickstein:

Q. Could you associate your termination with the publication of any particular issue of Liaison, that is, was it after Issue 2 or 3 or what have you? A. I had completed five issues of Liaison and two had been published.

Q. Did you see the issues of Liaison, Numbers 3, 4 and 5, as they were actually sent out? A. Yes, I have copies of them.

Q. Were they the same issues or did they contain the [55] identical material that you had prepared and submitted? A. Not all of it, no.

Mr. Dickstein: No further questions.

Mr. Creamer: No further questions, Your Honor.

The Court: We will have a ten-minute recess.

(A short recess was taken at 11:15 A.M.)

Exhibits Marked for Identification

Mr. Creamer: If Your Honor pleases, I request that "The Housewife's Handbook On Selective Promiscuity" by Rey Anthony be marked as Government's Exhibit G-17

The Court: That's the little black book?

Mr. Creamer: Yes, sir.

Mr. Shapiro: No objection to its being marked for identification and offered in evidence.

Mr. Creamer: In that event, I offer it in evidence.

The Court: Just a moment, please. I want to complete my record.

Thank you.

("The Housewife's Handbook on Selective Promiscuity," by Rey Anthony, was marked Exhibit G-17 for identification.)

[56] Mr. Creamer: I offer at this time G-17, which is the "Housewife's Handbook On Selective Promiscuity," by Rey Anthony, in evidence.

(Exhibit G-17, formerly marked for identification, was received in evidence.)

Mr. Creamer: I request that Eros magazine, Volume 1, No. 4 be marked as Government's Exhibit G-18 for purposes of identification.

The Court: Does this Eros have a volume and number?

Mr. Creamer: Yes, sir.

The Court: What page?

Mr. Creamer: It appears on the outside, Eros, Volume 1, No. 4.

The Court: Volume 1, No. 4?

Mr. Creamer: Yes, sir, and it also, I believe, appears, Eros, winter, 1962, Volume 1, No. 4 on the first page.

Motion to Dismiss Indictment—Refused

The Court: Really on the first printed page of the publication?

Mr. Creamer: Yes, sir.

(Eros, Volume 1, No. 4, was marked Exhibit G-18 for identification.)

Mr. Creamer: Your Honor, this is G-18, the [57] edition of Eros in the indictment, Volume 1, No. 4, and at this time I offer it in evidence.

Mr. Shapiro: No objection.

The Court: No objection? Admitted.

(Exhibit G-18, formerly marked for identification, was received in evidence.)

The Court: Now, somebody before the argument supplied me with these three matters that are now in evidence.

Mr. Creamer: Yes, sir.

The Court: In other words, we are not concerned with those? The originals have been marked over here? Then I will keep them and we will have the originals down in the clerk's office.

Mr. Shapiro: Yes, sir.

The Court: It will be easier for me. We have not enough space in our office for all the things we get in all our cases.

Mr. Creamer: If Your Honor please, the Government rests.

[58] Mr. Shapiro: The defense now moves for a dismissal of the indictment on the ground that the Government has failed to make out a case under 18 U. S. Code, Section 1461.

I am sure Your Honor does not want to hear extensive argument from me on the legal issue. Your

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Honor was very kind to hear extensive argument in connection with our motion to dismiss the indictment.

We feel that under the law, under the tests set forth in the Roth, Manual Enterprises cases, by the Supreme Court of the United States, the thing that I stated at the opening of my argument, this two-fold test of obscenity that is set forth in the ALI penal code has not been established on the face of the documents in this case, and since that is the only thing upon which the Government relies to establish it, we say that the Court should dismiss the indictment dealing with the mailing counts and, of course, in connection with my prior argument with regard to the non-applicability of the Hornick case in the Circuit any more, we say it also should dismiss the advertising counts.

That's my motion, sir.

The Court: Motion refused.

[59] DEFENDANTS' EVIDENCE

Mr. Dickstein: The defendants call Dr. Charles McCormick to the witness stand

CHARLES G. McCORMICK, SWORN.

Direct examination by Mr. Dickstein:

Q. Dr. McCormick, would you describe for the Court your educational background? A. My undergraduate work was completed in 1937 at Amherst College in Amherst,

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Massachusetts, graduate work for degrees; a Bachelor of Divinity at the Union Theological Seminary in New York City in August of 1944; a Doctor of Education at Columbia University in January of 1946.

I have done graduate study in psychology at the University of Denver, in Denver, Colorado; Springfield College, Springfield, Massachusetts; the University of Massachusetts in Amherst, Massachusetts; and at the New York School of Social Work, part of Columbia University in New York City.

Q. Have you done clinical work in psychological counseling?

The Court: I didn't hear the second word.

By Mr. Dickstein:

[60] Q. Have you done clinical work in psychological counseling? A. I am a clinical psychologist and have been in private practice as such for the past 13 years and on a part-time basis while working for other institutions like Vassar College for five years prior to that.

My training in clinical psychology began in September of 1942 at Columbia University concurrently with the work that I was doing at Union Theological Seminary.

Q. Are you a member of any professional organizations? A. I am a member of the American Psychological Association, the New York State Psychological Association, I am a Fellow of the American Group Psychotherapy Association and a member of the American Association for the Advancement of Science.

Q. Do you have a position with the International Journal of Group Psychotherapy? A. I am on the editorial board of the International Journal of Group Psychotherapy and have been since its founding which was approximately ten years ago.

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Q. Are you certificated as a psychologist in any jurisdictions? A. I am certified in New York State and in California as a psychologist.

Q. Do you teach psychology at any institution? A. I have been teaching psychology at the New York School [61] of Social Work in New York City since September of 1947.

Q. And continuously to this day? A. Continuously and continuing on into the next semester, also.

Q. Dr. McCormick, from your professional viewpoint can pornographic material be described in psychological terms? A. I can describe it as such.

Q. Will you please do so? A. Essentially for material to be pornographic it has to have several characteristics: (1) It must defile or defame sex and sexual expression. It must distort reality, psychological reality and physical reality. It must play up the ignorance and the fantasy of the reader. Its objective should also include creating the impression that the reader or the hearer or the viewer, whichever the case might be, is able to extract some kind of pleasure without any element of responsibility, and it must also have the basic sense of mixing the reader's own sense of guilt or dirt or taboo and pleasure. In other words, it must combine both the sense of pleasure and the sense of guilt or shame in the—

Q. Why is the sense of guilt in the reader a necessary element of pornography? A. The sense of guilt is essential because the reader has [62] to be incited against authority for one thing. In other words, he must have a continuing sense that what he is doing is bad so that he will not pay attention too closely to reality. He has to be engrossed by the sense that he is doing something against authority.

This, by the way, is one of the characteristics of pornographic material, that the characters in it who perpetrate different kinds of offenses against the sense of propriety

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are usually or often figures of authority like Senators, Ministers, Attorneys, and so on, in other words, authority figures in the community so that the individual has the sense actually of going against that which is taboo.

There is a certain satisfaction in outwitting authority, and this is part of the sense of guilt.

There is also a sense of being able to engage in something that is intrinsically bad to the reader based upon whatever he has accumulated from the air in which he grew up, as though it were something evil, something wrong, something that the authority would disapprove of, and at the same time there has to be the ability to experience the natural, normal, healthy pleasure that a physical organism provides every animal, so that's why the guilt feeling has to be there, and that's what is meant by guilt.

[63] Q. Well, what are the elements in our society that produce these guilt feelings?

Mr. Creamer: I object, Your Honor, unless he is going to be able to found some impact on society that he can testify from. He is speaking purely in psychology, in that field. Now, he is beginning to get into the impact on society, and I don't think he has been qualified to testify as to the impact on society.

I don't mind his discussion of the psychologic effects as he sees it concerning pornography and what the psychologist feels pornography is, but if he is going to try to interpret the impact or what society as a whole feels about pornography, I don't think he has been qualified.

Mr. Dickstein: That wasn't my question, Your Honor, and the purpose of my question is to illuminate the psychological description of pornographic material which Dr. McCormick has been giving.

The Court: I will overrule the objection.

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The Witness: May I have the question again?
(The question was read.)

A. I alluded to them when I said that the individual assimilates this from the atmosphere in which he is growing up, the prevailing anxiousness and the sense of taboo on the part of parents, teachers, the parents of playmates, and the [64] general attitude of the community at large. All of these things contribute to the development of this. In other words, this is what is making the impact on the child as he is growing up, that inculcates in his system the conviction that there is something bad or wrong intrinsically about some part of his experience.

Is this what your question was getting at?

By Mr. Dickstein:

Q. Yes.

How does pornographic material as such actually play a part in the sense of shame that all people have about sex to a greater or lesser degree? A. May I while I think of it give an illustration of what I mean? So often I know we psychologists don't talk very straight, but the way these attitudes get inculcated in the system, a very simple one that has nothing to do with sex as such where a child in a classroom in the sixth grade was studying social science, they call it, and it had to do with farming, and the question of fertilizer came up, and one of the fertilizers used according to the textbook was manure, and one of the children in the class asked, "How do they get manure," and the teacher refused to answer.

Now, there was nothing explicit on the part of the teacher in terms of saying that this is connected [65] with something that is taboo or bad so you should not think about those things, but the implication in the atmosphere on the basis of that refusal was profound.

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I hope that helps you take—the other question.

I don't have the present question now.

Q. Yes. The next question was, how does pornographic material play a part in the sense of shame that all persons in our society have about sex to a greater or lesser extent?

A. The inference in most pornographic material is conveyed—the inference of it being shameful is conveyed—in several ways (1) by the usual way in which these things are published. They are published secretly. They are published without acknowledgment. Most pornographic material that I have seen won't even carry a title page on which the author's name is given or the publisher's name is given. There is no date. There is no commitment or responsibility behind it. This is one way in which the person who would read this, if it falls into his hands, is given the impression that sex is shameful and that what this book or picture or whatever it is is about is a shameful item.

Another is that usually the characters in these publications themselves have a sense of shame about what they are doing. They have this experience of the [66] mixture of shame and pleasure and enthusiasm about what they are doing with the self-condemnation for what they are doing.

And then the authors as a general rule at the end of his publications will offer a kind of sermon about the evils or exorbitant indulgence in sexual expression.

These are some of the ways that pornographic material itself conveys the sense to the reader that sexual expression is evil.

It is always with a clandestine or illicit atmosphere surrounding the writing and frequently—

Q. Does the pornographic material which you have seen treat sex realistically? A. It is always unrealistic. This is one of the essential building blocks of pornographic material. In other words, there has to be a distortion of

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reality. The author's either knowledge or his intent in writing is extremely limited. In other words, he actually might not know or he might by design imply that the human anatomy, for instance, is capable of things that no animal organism is capable of. The size, the structure, the ability to perform and function in many different ways are exorbitant and unrealistic.

The emotional contexts within which these situations are developed are always unrealistic. They [67] frequently involve, for instance, the violation of preadolescents. There is one—may I refer to a publication?

The Court: You answer the questions of your counsel, whatever they are. If counsel for the Government has an objection, he may make it. I don't know what the next questions are going to be.

By Mr. Dickstein:

Q. Go right ahead, Dr. McCormick. A. It is this question of reality and whether these things are realistic. They are not.

In one book, for instance,—it is called "The Autobiography of the Flea"—there is the violation of a girl who is still pre-adolescent. She has not yet started to menstruate and the reaction of that child as portrayed by the author is completely unrealistic. The impact of the situation that she found herself in would have been so different from what the author himself portrayed that it was totally out of reality.

Q. But why is it necessary for this material to be detached from reality in order to create this function of sexual arousal and sexual shame, this combined effect of sexual arousal and sexual shame as you testified to? A. The principal reason for that is in order to avoid [68] distracting the reader by involving his judgment and his

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ability to discriminate. For him to make connections with it is impossible. This couldn't happen. As long as the author is able to keep his characters two-dimensional and to keep the plot completely superficial he is able to keep his reader's or viewer's attention exclusively on attempting to absorb the guilty pleasure from the material itself.

Q. Well, why does true or realistic material dealing with the subject matter of sex not accomplish this effect upon the average person? A. Why does true presentation or realistic presentation not accomplish it?

Q. Yes. A. Because reality brings with it an awareness of responsibility, an awareness of implication, an awareness of some kind of carrying charge, so to speak, for the individual. It doesn't detract from the pleasure or the satisfaction or the erotic experience, the fact that it is realistic, but it does eliminate the indulgence in irresponsible fantasy, sort of day-dreaming, and the reason for keeping it unrealistic is to eliminate this sense of burden or reality. If a person once gets to thinking while he is reading pornographic material he is going to get bored because it is just going to be the same diet over and over again of the impossible, [69] the irrelevant, and the unpleasant.

Q. You mean thinking as distinguished from indulging in fantasy? A. Exactly.

Q. Does pornographic material act as a sexual stimulant or does it produce sexual stimuli? A. Yes, it does.

Q. On most people? A. There would have to be something wrong with the person for it not to. In other words, by "wrong," I mean he would have to be ill in some way, physically or psychologically, if he experienced no erotic response to pornographic material.

Q. Would the view of an attractive nude woman stimulate sexual interest in a healthy, normal male? A. It would depend on the setting. For instance, if it were at certain camps that are set aside for so-called nudists, the fact

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that there are nude males or nude females would not be erotically stimulating to either sex or any individual. If it were at home, for instance, with the husband and wife, if they were accustomed to being around the house nude, their nudity as such would not be erotically stimulating, so there could be some situations in which nudity could be and others in which it would not.

Q. Doctor, assume with me for the purpose of the question [70] the circumstances are such as to create this sexual stimulant upon your average male. Could you distinguish between the feelings, the emotions, the psychological aspects of the effects of these two stimuli, that is, pornographic material with the view of the nude woman upon such person? A. The erotic element would be felt, experienced or conscious for the individual exactly the same. In other words, in a healthy situation where there was something erotically stimulating the person would feel it as an erotic response.

Q. Would the average person in the latter case, that is, the stimuli produced by the view of a nude woman, be ashamed?

Mr. Creamer: If Your Honor please, I object once again to having Dr. McCormick testify about the average individual. There has been no qualifications in his area of testifying as to the average citizen and I object on that ground.

The Court: Objection sustained. He may testify as to what he thinks and not what the average person thinks. I don't believe that that's part of his qualifications.

Mr. Dickstein: Your Honor, as a psychologist he has been both trained and experienced in the emotional aspects of people individually, of mental health, of mental [71] illness, and for purposes of the definition of what is pornographic material, of

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course, what is obscene material, one must weigh this material in terms of its effects on the average individual.

The Court: I will reverse myself and it will be granted, sir.

The Witness: May I have the question again?
(The question was read.)

A. Not under the circumstances you have described.

By Mr. Dickstein:

Q. Would he have an itching or a morbid or a licentious form of sexual arousal? A. This can be produced only by some form of pathology in the individual himself. In other words, if he is ill—I don't want to take up your time with jokes—but one person actually considered the Rorschach—this is a joke; it is not a fact—the Rorschach ink blots as dirty pictures because he was able to see on the basis of his projections the figures that to him were erotically stimulating. Psychopathological individuals could, or if the publication were designed to do this, but under ordinary circumstances where the publication were a responsible one, there would be no reason to expect this to be so. Otherwise we would have to close down all our museums.

[72] Q. What do you mean by "a responsible publication"? A. Well, a museum would be a responsible one in the sense that it is established by the community and the people who are functioning on behalf of the community must account to the community for what it presents.

At the Metropolitan Museum in New York City, for instance, in the main corridor there is a special exhibition of Rodin's sculpture, and if you are familiar with that, you know that it is really erotic representations of males and females in nude direct contact. Under those circumstances, however, the general public as you would see them moving around among that exhibit are in no way inflicted with a

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sense of shame or a sense of debasement or any feeling of getting some free ride. They are engaged in a community enterprise of esthetic appreciation.

Q. Is the average person afflicted with a sense of shame with reading the type of pornographic material that you have described?

Mr. Creamer: If Your Honor please, I object again and I would like my objection to continue any time a question is drafted about an average person to this witness.

The Court: Objection overruled.

Mr. Creamer: On the same ground.

The Court: Exception noted.

[73] A. Under the circumstances of the material that the individual is dealing with, I don't believe there would be anybody except someone who was extremely exhibitionistic, which is pathological, who would feel comfortable about having his neighbor who wasn't also pathological see that he was reading that material.

Mr. Dickstein: Your Honor, we have some material that we wish to mark and subsequently offer.

The Court: Start with D-1.

Mr. Dickstein: It has been obtained from private collections and we would appreciate it if they can be marked with a label attached rather than stamped or separately inscribed on the material. That is not true of all of this material. This first batch we have no objection to having marked.

For Defendant's Exhibit 1 for identification we would like to have marked a little pamphlet which has no external identification other than the stamped picture of a pig.

(Small pig booklet was marked Exhibit D-1 for identification.)

Exhibits Marked for Identification

Mr. Dickstein: The next Defendant's Exhibit, D-2, for identification, a little pamphlet identified as "John Dillinger in 'A Hasty Exit.' "

[74] (Booklet entitled "John Dillinger in 'A Hasty Exit' " was marked Exhibit D-2 for identification.)

Mr. Dickstein: As Defendant's Exhibit 3 for identification a pamphlet, "Mr. Bregar Is Sold On TV."

(Booklet, "Mr. Bregar Is Sold On TV," was marked Exhibit D-3 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-4 for identification a pamphlet entitled "Dagwood Has a Family Party! Let's go."

(Booklet, "Dagwood Has a Family Party! Let's go," was marked Exhibit D-4 for identification.)

The Court: Is that "Dagwood"?

Mr. Dickstein: "Dagwood."

From this point on we ask that they be identified with labels rather than writing or stamping.

As Defendant's Exhibit D-5 for identification a pamphlet entitled "Secrets Will Out."

(Pamphlet, "Secrets Will Out," was marked Exhibit D-5 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-6 for identification a book entitled "The Oxford Professor."

(Book, "The Oxford Professor," was marked Exhibit D-6 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-7 [75] for identification a book called "The Autobiography of a Flea." I note, Your Honor, there is no title on

Exhibits Marked for Identification

the outside of the jacket. It is in a green binding without any other identification. It is, however, identified within the book by that title.

The Court: And the title?

Mr. Dickstein: "The Autobiography of a Flea."

The Court: That is D-7?

Mr. Dickstein: D-7.

(Book, "The Autobiography of a Flea," was marked Exhibit D-7 for identification.)

Mr. Dickstein: And as Defendant's Exhibit D-8 for identification a book entitled "Devil's Advocate."

(Book "Devil's Advocate," was marked Exhibit D-8 for identification.)

The Court: Pass them all over to Mr. Creamer, please.

As I have it, it is 1 to 8, inclusive, sir?

Mr. Dickstein: That is correct.

* * *

[77] *By Mr. Dickstein:*

Q. Dr. McCormick, have you read the material identified as Defendants' Exhibits D-1 through D-8? A. I have not read any of these, these little ones, the little paper ones.

The Court: The little paper ones, Doctor, are—

The Witness: Oh, yes. I am sorry.

The Court: You forgot to wear your glasses.

The Witness: Yes.

Mr. Dickstein: Would the record so note?

The Court: Yes.

Now, the answer is what, Doctor?

The Witness: The answer is, yes.

The Court: You have read—

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The Witness: I have seen these paper ones, the little paper ones that are the cartoon strips.

[78] The Court: That is D-1, D-2, D-3.

The Witness: D-2, 3, 4, and D-1.

The Court: D-5?

The Witness: And D-5. I have seen this, but I have not read it. I have not read it in its entirety.

The Court: D-5 you have not read?

The Witness: I have seen it. I have seen the pictures and some of the text, but just cursorily.

The Court: I think the question was general, was it not? Have you read all, or are you just showing the little booklets?

Mr. Dickstein: All.

The Witness: D-6, D-7, D-8 I have read completely.

The Court: Thank you.

By Mr. Dickstein:

Q. Doctor, will you give us your opinion of the effect of this material on the average reader.

Mr. Creamer: I object, your Honor. If the doctor is going to testify concerning any of these materials I think they should be offered in evidence, and if they are offered in evidence, I have no objection.

Mr. Dickstein: Your Honor, I can make the offer at this time, and I do so.

[79] Mr. Creamer: If your Honor pleases, I object to the introduction into evidence of these matters on the basis that they are not relevant to the inquiry that is before your Honor, and my authority is the Womack decision which is 294 Fed. 2d, 204, a 1961 case from the District of Columbia. Certiorari was denied 365 U. S. 859. In that case an attempt was made to place and offer into evidence certain other

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magazines. The instant case was a magazine case. The court held that it was immaterial and not relevant to the inquiry.

The Court: Do you have the case?

Mr. Creamer: I have the case here.

The Court: Do you have anything more you want to say?

Mr. Creamer: No, sir. That is the basis of the Government's objection.

The Court: Now, you, sir.

Mr. Dickstein: Your Honor, the purpose of the offer in the Womack case was to demonstrate the contemporary community standard by what is permissibly read in our country. It is not the purpose of this offer to accomplish that by any means. This is the material which we will show and which demonstrates for itself is pornographic. It is introduced for illustrative purposes and for the purposes of having Dr. McCormick testify with respect to its effect physiologically [80] and psychologically upon the average person. The Supreme Court test, as contrasted with the physiological and psychological effect of other types of material, including the material which is under indictment here.

The Court: I would like to see, before I make the final ruling, I would like to see. Whoever has the decision down here bring it up to me.

Mr. Shapiro: Right here, your Honor.

(A book was handed to the Court.)

Mr. Shapiro: It is on 205 and 206.

The Court: Will you state your objection again, Mr. Creamer.

Mr. Creamer: Yes, sir. My objection is based on the ground that these particular publications, or whatever you want to call them, are not relevant to

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the inquiry that we have now. Our inquiry is whether or not the materials under the indictment are obscene. If we go into an independent inquiry as to whether or not these are obscene, I think we are being carried far afield for the purpose of this inquiry, and whether or not—if these things are obscene is immaterial to the trying of this case. That is the Government's position, and we base it on the language in *Womack*.

The Court: And you, sir? Your answer to that was?

[81] Mr. Dickstein: Our answer to that was, your Honor, that they have probative value in underlining, in presenting the examples of the type of material which Dr. McCormick has testified to, which have the capacity of creating the physiological and psychological aspects in the average individual that the Supreme Court is talking about when it says the predominant appeal to prurient interest. It is further our intentions based upon this foundation to have Dr. McCormick testify as to the difference in the physiological and the psychological aspects of the material in question under this indictment and by illustrating, by talking to the differences as he is qualified to do by his expertise to show that this is not, that this material does not come within the ambit of Section 1461 of the statute.

The Court: I will restate my ruling as originally stated and permit you to testify to it, and also give you the opportunity if you desire later on to move to strike the doctors' testimony in regard to this. At the moment we are going to admit them in evidence.

Mr. Creamer: Thank you, your Honor.

The Court: Just a moment.

Now, sir.

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By Mr. Dickstein:

Q. Dr. McCormick, would you state the effect of this material [82] upon the average person.

The Court: I assume that comes under your original objection?

Mr. Creamer: Yes, sir. That comes under it. I object to any testimony regarding the average person.

The Court: Yes.

The Witness: The effect on the average person, or the person in the normal curve would be one of revulsion, and one of being assaulted. In other words, this would represent—I call it—it is not—I don't use this term legally, but it is statutory rape, in effect, because the person is reading it with acquiescence and at the same time his system is being taken advantage of by a predetermined course established by the authors. In other words, it is actually destructive for the individual, the ordinary individual to read that kind of material because he doesn't have the emotional base and he doesn't have the capacity for keeping context. This is the design of this kind of material, to keep the reader or the viewer from keeping reality context.

By Mr. Dickstein:

Q. At the same time the average reader is revolted would he also be sexually stimulated by this material? A. Yes, he would be sexually stimulated by this. He would be sexually—

[83] The Court: Did you look enough at D-5 to say that that applies to D-5 as well? Look at it and see what you have to say about it.

The Witness: Yes. This one, the amount that I have seen and the pictures that are contained therein, they are a violent assault on the system. You

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only have to read two pages of that. As a matter of fact, once you have read one of these you don't need to read—you don't have to read through one because they are repetitions. It is the same assault over and over again, and in this one little pamphlet the same material is covered in the first four pages that is covered in all of these volumes put together.

By Mr. Dickstein:

Q. Doctor, are you acquainted with the Grove Press edition of the so-called unexpurgated edition of the work of D. H. Lawrence, "Lady Chatterley's Lover"? A. Yes, I have read it.

Q. Could you describe the effect of a reading of that work upon the average person at this particular point of time in our society?

Mr. Creamer: I object once again, your Honor, on the ground that "Lady Chatterley's Lover" is not on trial, and the doctor can not testify to an impact on the average citizen.

[S4] The Court: I assume he would give the same reason?

Mr. Dickstein: That is correct, your Honor.

The Court: We will admit the testimony. Exception noted to the United States.

The Witness: There are several differences between the material—while it is erotic material—between the material in "Lady Chatterley's Lover" and this kind of material. They both are sexually stimulating, but the impact on the system of the ordinary individual is radically different. There is context. The reality setting, the reality factors, the complications, the responsibilities of the author, the attitude of the author as he presents this material, even though many people who would be in this category of ordinary citizen might be angered,

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or annoyed, or upset, or object to that kind of material, the actual effect on their system will not be unhealthy. It will not be destroying, tearing, as this material will. This is a responsibility in the sense that the actual presentation by the author gives you reality situations rather well—well, I am not a literary expert. So, I guess I won't testify as to how well written it is, but it is valid in character development. It is a good portrayal of that situation.

By Mr. Dickstein:

Q. Are you acquainted with "Lolita" by Nabokov?
[85] A. Yes, I am.

The Court: What is that? Spell that, please.

Mr. Dickstein: N-a-b-o-k-o-v.

By Mr. Dickstein:

Q. Have I spelled that correctly, Dr. McCormick? A. Yes.

Q. Does the book "Lolita" deal with the same type of subject matter that is contained or often contained in pornographic material as exemplified by Defendants' Exhibits D-1 through D-8? A. It is the exact—

Mr. Creamer: Pardon me. I object on the same ground. "Lolita" is not on trial in this case.

The Court: Same reason?

Mr. Dickstein: Same reason.

The Court: Objection overruled. Exception noted.

Mr. Shapiro: Excuse me, your Honor. I am going to make this suggestion: Might the United States Attorney have continuing objections to this rather than—

The Court: I do not know what we are going to run into. I have tried that in some other cases and it does not work. It would be much better to have

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you object when you have an objection because now we are dealing with various bits [86] of testimony and it is not a question of a series of docket entries in a book, and the next items are some more docket entries of various corporations. It does not work.

The Witness: The subject matter in the case of two of these documents is identical. In other words, this one not completely.

The Court: You are pointing to what?

The Witness: I am pointing to the "Oxford Professor" and the "Autobiography Of The Flea." These two, this "Oxford Professor" one contains one incident involving this kind of an episode of the seduction of an immature child, and the "Autobiography Of The Flea" is replete. It is completely that of the seduction of a pre-adolescent, and "Lolita" is the story of the seduction of a pre-adolescent by an established psychotic individual.

By Mr. Dickstein:

Q. They are similar, though, are they not, in the sense that they all deal with the same pathological state, and they all deal with the subject of sexuality? A. That is what I meant to convey. That is, they are actually the—the themes are identical.

Q. And could you tell us what the difference is in the way in which they deal with the similar subject matter? A. Well, that one word I presented this morning, "reality," [87] is the basic difference. In other words, the reality context where the character development by the author of "Lolita" and the character development—well, I guess I better stay with "Lolita." The character development in "Lolita" is actually valid. It is psychologically sound. It is a classic in that respect, and the reader is constantly supported by the author in appreciating the facts that this is one individual's distortion, but a reality of distortion. In the "Autobiography Of The Flea" the author

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doesn't support the reader at all in keeping the context of this actually being a pathological, sick situation, and the character development is not valid, either, because it is two-dimensional. In other words, it just suits the author's design to keep the reader engrossed in a sense of being soiled and pleased by sexual expression. In "Lolita" it is an actual development of a situation in real life. This is substance, and there is reality in "Lolita" and there is no reality whatsoever in the "Autobiography Of The Flea."

Q. Doctor, have you read the "Housewives' Handbook On Selective Promiscuity," Government's Exhibit G-17 in evidence? A. Yes, I have.

Q. Is the predominant effect of this book to create in the average person an itching, morbid or shameful desire or longing with respect to sex? [88] A. No.

Mr. Creamer: Objection, your Honor. The objection is based on the fact that that is the ultimate question of fact for the jury and should not be testified to by experts or alleged experts.

* * *

[90] Mr. Dickstein: * * * Although Mr. Creamer stated that the ultimate issue in the case is the prurient interest of the material that is not the ultimate issue at all. It is whether the material is obscene, just as in the Jenkins case the issue was mental disease and insanity—

The Court: Before you go on I wish you would give Mr. Creamer an opportunity to read that decision, unless you want to say something about a similar decision and he may want to look up both of them at the same time.

Mr. Dickstein: I was going to do that. I call [91] the Court's attention to Smith against the people, particularly the material bracketed at page 225 of 80 Supreme Court.

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The Court: I suggest that you look at that, Mr. Creamer, and then look at this.

(A book was handed to the Court.)

Mr. Creamer: Just one question. It was stated that I said the prurient interest was the ultimate fact. My recollection is that I did not. I said it was obscenity. I just wanted to correct the record in that statement.

* * *

[93] The Court: The case of *Smith versus People* is found in 361 U. S. 215 and the particular section called to the attention of the Court is page 225.

Mr. Creamer: With Your Honor's permission could I present my argument?

The Court: Yes.

Mr. Creamer: With regard to the *Jenkins* case which is a homicide case I refer to the Court's own language—just one moment, please—

The Court: That is not a homicide case; it is a burglary case.

Mr. Creamer: Oh, excuse me. Pardon me?

The Court: A burglary case.

Mr. Creamer: A burglary case, yes.

The Court: And some other things thrown in.

Mr. Creamer: In discussing expert testimony the Court says:

"First the subject of the inference must be so distinctly related to some science, professional business or occupation as to be beyond the ken of the average layman."

Now, in this case the question that is asked, the whole purpose of the law in obscenity is the average man applying contemporary community standards. It is the average [94] man we are looking for, not an expert. It is the same thing as if in a negligence

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case an attempt were to be made to have an expert testify as to whether or not there is negligence. There the average reasonable man test is applied by the jury and no expert is permitted to testify because it isn't something beyond the ken of the average layman, and this question of obscenity from the Supreme Court ruling is certainly not beyond the ken of the average layman. The whole purpose is to get, in effect, the average layman's feeling based on his contemporary community standard as to whether or not the material is obscene, so I think there is a distinction there.

Of course, when one testifies as a psychiatrist on insanity you are in a scientific field. You are in a field where the average layman has little or no knowledge, and it would be perfectly proper in those circumstances to have testimony concerning a man's medical condition.

I call Your Honor's attention to the Kahm case, Kahm versus United States, 300 Fed 2d, 78. That's a 1962 case where certiorari was denied by the Supreme Court, and in that case—

The Court: What was that page?

Mr. Creamer: Pardon me, sir.

The Court: What was the page?

Mr. Creamer: The page is 84. It starts at [95] 78. I am quoting from page 84:

"It is plain to us that when the jury was instructed by the trial court in language such as that approved by the Supreme Court in the Roth case, it was fully capable of applying those standards and that charge to the materials shown to have been mailed here. Nothing is more common than for a jury in a case involving charges of negligence, as for example negligent homicide, to determine whether the proven conduct measures up to the standards of

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a reasonably prudent man. We think it may fairly be said that no amount of testimony by anthropologists, sociologists, psychologists or psychiatrists could add much to the ability of the jury to apply those tests of obscenity to the materials here present."

And in my argument here I rely on that language as well.

Then with regard to the Smith case, the concurring opinion by Frankfurter, the most that I can make of this concurring opinion in this area is that Justice Frankfurter feels that expert testimony should be heard with regard to contemporary community standards, and I respectfully submit to Your Honor that is not the question that has been presented to this witness. He has been asked his opinion as to whether or not this is obscene, "The Handbook," and for these reasons I [96] think the question is objectionable.

The Court: Let's have the question again and then let's have argument on the part of counsel for the defense.

Mr. Dickstein: I was going to suggest the question be restated because I did not expect the witness to remember.

(The question was read by the reporter as follows:)

"Q. Is the predominant effect of this book to create in the average person an itching, morbid or shameful desire or longing with respect to sex?"

Mr. Dickstein: Your Honor, the question of requisite prurient appeal of the work in question, one of the factors that the Supreme Court says goes into the test of whether material is or is not obscene is a question of a state of mind, what is going on inside

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of the skull of the average individual when he views the material under indictment.

Now, I daresay even if we could put on the witness stand 10 million people and have their psyches identified to establish them as average, as a matter of sound psychological principle they are the least competent observers as to what is going on inside of their heads. It is the psychologist or psychiatrist by reason of his special training who may testify on what is going on inside of the man's head in [97] terms of the effect of material upon him who can aid the Court in arriving at the ultimate conclusion which is obscenity and on which prurient interest appeal is just merely one aspect.

Your Honor has read the Smith case. I will not go into it, but I don't understand it as saying what Mr. Creamer suggests it is saying.

The Court: I will permit the question.

The Witness: May I hear the question once again?

(The question was read.)

A. No, it is not. That is the distinction between pornographic and erotic material. The distinction between pornographic and erotic education or material is that the pornographic material is morbid, does tend to corrode and to turn the person against himself in the process of reading or seeing.

In the case of "The Handbook," this effect will not take place for the ordinary person reading it.

By Mr. Dickstein:

Q. Doctor, based upon your professional knowledge and experience does "The Housewife's Handbook," Government's Exhibit 17, give a realistic picture of a woman's attitude and activities with respect to sex? A. It does.

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Mr. Creamer: I object, Your Honor, on the same [98] grounds.

The Court: Same ruling.

A. It does.

By Mr. Dickstein:

Q. Is it a guilt-laden work?

The Court: I didn't hear.

By Mr. Dickstein:

Q. Is it a guilt-laden work in psychological terms?

Mr. Creamer: I object, Your Honor.

The Court: Same ruling.

A. What you are getting at there is, does it actually produce or is it intended as with the authors of pornographic material?

By Mr. Dickstein:

Q. Speak to what its actual effect is again upon the average person. A. It will not produce a guilt feeling in the individual who is reading it because it is supported by a responsible attitude on the part of the author. In other words, the person finishing reading that will feel informed rather than guilty.

Q. Have you read "Eros," volume 1, No. 4, Government's Exhibit 18 in evidence? A. Yes, I have.

[99] Q. In your opinion, would the predominant effect of this book be to create in the average person an itching or morbid or shameful desire or longing with respect to sex?

Mr. Creamer: Objection, Your Honor, on the same ground as previously stated.

The Court: Same ruling.

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A. No, it would not. Again it is a serious work.

A one-sided observation is that the ordinary person would have difficulty getting through it because he has to work to do so; he has to be serious about reading.

Q. Leaving aside for the moment the question of the morbid form of sexual arousal that you spoke of in terms of pornographic material, is there any significant portion of "Eros," No. 4, which would be sexually stimulating to the average person, and here I mean when I say "sexually stimulating" a healthy sexual response.

Mr. Creamer: Objection, Your Honor, the same ground.

The Court: Same ruling.

A. You mean any portion of it?

By Mr. Dickstein:

Q. Any significant portion. A. I don't understand what would be a significant portion, [100] but there are a couple of passages in there that would be erotically stimulating to an individual reading it.

Q. To an average individual? A. To an average individual reading it.

Q. When you say "a couple of passages," could you give it in terms of lines? A. It is in the article by Frank Harris, I think his name is, or it is part of his writing, actually, and it is hard to do from memory, but I would guess that there are several pages that would actually be erotically stimulating.

The Court: Will you take the book and point those out?

Mr. Dickstein: Pardon me?

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The Court: Will you take the book and point those out?

(Mr. Dickstein handed the book to the witness.)

A. Beginning—this is on page 41—beginning with the last central paragraph on that page, there are—

The Court: "I got up," is that it?

The Witness: "I got up immediately," beginning with those words, "I got up immediately" on page 41 and continuing to the top of page 42 ending with the words "dear"—it is "dear, dear."

The Court: On which column?

[101] The Witness: The first column.

The Court: That would be the end of the first paragraph of the first column?

The Witness: Right.

There is another section in here that would have that kind of effect, too.

By Mr. Dickstein:

Q. Would that be the portion of the article by the Kronhausens? A. No, I mean in this same article by Frank Harris.

Q. Oh. Can you identify that other portion of the Frank Harris article? A. On page 43, the right-hand column under the heading "Searching For Perfection," and ending on page 44, the first column just above the heading, "The Great West Beckons." The sentence ends, "but don't let's talk of it." That's page 44.

Now, in the article by the Kronhausens, the article begins on page 65, there are some quotations. Within the body of the article there are quotations by the authors of other works.

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The Court: What page was that, sir?

The Witness: The article begins on page 65. The title of it is "The Natural Superiority of Women As [102] Eroticists."

The Court: And starting where, sir?

The Witness: At the top of the third column on that page 65 beginning with the words, "The strange quality," excepting the interjection by the authors, it continues. There is one paragraph at the middle of the column that is by the authors that would be omitted in terms of this effect, continuing over to page 66, ending that first paragraph in that first column.

The Court: "Through her body"?

The Witness: "Through her body."

By Mr. Dickstein:

Q. Doctor, these portions that you have just referred to as being erotically stimulating, would this stimulate in the average person a morbid or unhealthy attitude toward sex? A. No.

Mr. Creamer: Objection for the same ground.

A. No, that is the distinction. In other words, there is no corroding or morbid effect. There is no deteriorating effect on the individual because of the reality context that the author who is being quoted here maintains. It is realistic. It is erotically stimulating but it is not pathological. In other words, there is not a sickness that [103] is being insinuated into the reader, and this is the difference and why it would not create a morbid effect on the reader but it would be erotically stimulating.

By Mr. Dickstein:

Q. Have you read Volume 1, No. 1 of "Liaison," Government's Exhibit G-16 in evidence? A. Yes, I have.

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Q. Would the predominant effect of this issue of "Liaison", either create in the average person an itching, morbid or shameful desire or longing with respect to sex?

Mr. Creamer: Objection, Your Honor, on the grounds as stated.

A. Not at all.

The Court: Overruled.

A. Actually I wasn't able to find anything erotically stimulating in it for a normal individual, ordinary individual. A person to be so stimulated by any of this material would himself have to be abnormally ill.

By Mr. Dickstein:

Q. Could you give us a brief description in psychological terms of the type of individual who would be sexually stimulated at all by any material in "Liaison"? A. It would be an individual that we would call paraphiliac is the technical term. Is this what you want, a technical [104] psychological explanation?

Q. Yes, please. A. It would be somebody who due to his distortion, psychic distortions, is able to extract from a fight or from an assaultive attitude sexual response regardless of whether it has any genital reference. In other words, somebody who could enjoy seeing somebody punched in the face or dropped on the street by a blow is the only kind of individual that would get any sexual response from this, and this would be perversion. It would be a person who is already perverted. In effect, he could create it as he looks at some material by reversing anger into sexual feeling.

Now, the bases of that primarily are these two articles which are the body of your "Liaison," one by Dr. Albert

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Ellis and the other, this "Semen in the Diet." Both of them have that same tone of fight, of assault on the reader, without having any established association with him. Neither one of them has any erotic effect on the reader or would have any erotic effect on the reader because they are private fights of the authors that are coming through those articles.

Q. Doctor, do you consider "The Housewife's Handbook" from the point of view of the psychologist a useful work? A. It would be quite useful as an educational instrument.

[105] Q. What do you see as the teachings of "The Housewife's Handbook"? A. The principal ingredient of that book is that it gives in real life terms with the idiom of a particular individual a realistic portrayal of the evolution of sexual awareness and sexual expression, an individual who is an ordinary, everyday person, with the natural emotional and intellectual limitations who had to grope her way through just like everybody else has to grope his way through toward some kind of a sexual adjustment, and in that sense it is a valuable instrument for a person who is looking for that kind of education, in other words, for sexual education.

Q. Do you see any clinical use for this book? A. I don't know whether this is relevant to your question, but in reading it myself it was useful to be able to see the handicaps of an ordinary normal person in expressing himself or herself in this instance constructively where the errors were precipitated, were caused by the author's emotional limitations. In other words, some of the things that the author does are actually the result of the author's own lack of development which lack of development is practically universal, and on the strength of that I found it useful as additional case confirmation material.

Is this what you meant?

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[106] Q. No, it wasn't. Well, you have answered one question. I was not referring to the use to the clinician, but whether the book would have a value if read by an average person. I am not speaking of a pathological person now.

Mr. Creamer: That's objected to, Your Honor.
The Court: Same ruling.

A. It would, I think it would be useful under supervision. I make the same restriction with respect to "The Handbook" that I make with reference to a great many popular books on psychopathology where the layman in reading it would not be able to distinguish those aspects that were the individual's own problems and those aspects of the material that were a natural, universal problem of getting educated, and on that basis I would like to be able to guide the person in making those distinctions.

Mr. Dickstein: No further questions.

A. May I make one further observation on that because I think this is a thing that the author's presentation deserves and that is the difference between—

Mr. Creamer: If Your Honor please, I request the witness answer questions and not expound on his own initiative.

The Court: Objection sustained.

[107] Mr. Dickstein: Your Honor, may I consult with Mr. Creamer for one moment?

(Discussion off the record.)

Mr. Dickstein: Your Honor, Mr. Creamer has kindly consented to allowing me to interrupt his examination of Dr. McCormick. We have a witness who must leave the court. He will not be long, and Mr. Creamer, of course, reserves his right to cross-

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examine Dr. McCormick and will be accorded an opportunity to do so.

The Court: It may be done.

Step down, Doctor.

Mr. Creamer: You are finished with the witness, I take it, at this time?

The Court: Step down, Doctor.

I didn't hear you, Mr. Creamer.

Mr. Creamer: I just wanted to make sure he was finished with the witness at this point before I began my examination.

Mr. Dickstein: The defendants call Dr. Horst Janson to the stand.

[108] HORST W. JANSON, SWORN.

Direct Examination by Mr. Dickstein:

Q. Professor Janson, where did you receive your education? A. I studied the history and criticism of art at the Universities of Hamburg, Munich and at Harvard University where I received my M. A. in 1938 and my Ph.D in 1942.

Q. Have you taught art and the history of art in any institutions of higher education? A. I have done so since 1936.

Q. Would you tell us where and the periods in which you did so? A. I taught at Harvard in 1936-37; in the Art School attached to the Art Museum at Worcester, Massachusetts, from 1936 to 1938; at the State University of Iowa from 1938 to 1941; at Washington University, St. Louis, from 1941 to 1948; and since 1949 I have been Profes-

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sor of Fine Arts and Chairman of the Department at New York University.

Q. Have you ever received Guggenheim Fellowships?

A. I have received two.

Q. When was this? A. In 1952 and in 1957.

Q. What are your publications, Doctor? [109] A. I have published a considerable number of articles and scholarly journals and a number of books including "Apes and Ape Lore in the Middle Ages and the Renaissance," published in 1962 at Warburg Institute of London University; a two-volume work entitled "The Sculpture of Donatello," published by the Princeton University Press in 1959; "The Story of Painting for Young People," together with my wife, Dora Jane Janson, published in 1952; "A Picture History of Painting," in 1957; "Key Monuments of the History of Art" in 1959; and a college textbook entitled "History of Art" that came out last fall.

Q. Doctor, what is the name of the official journal of the College Arts Association of America? A. "The Art Bulletin."

Q. Do you have any function with respect to "The Art Bulletin"? A. I am its editor-in-chief.

[110] Q. Have you previously seen Volume 1 issue for Eros, Government's Exhibit G-18 in evidence? A. I have.

Q. Do you have a copy of that with you? A. I don't.

Q. May I provide one? A. Thank you.

Q. Doctor, would you turn to page 2 of this exhibit.

A. I have done so.

Q. Who is the artist who did that particular plate? A. This is Albrecht Durer, the greatest German artist of the 16th Century.

Q. Would you continue, then, and turn two pages to the pages following page 7—excuse me, following page 5. A. Indeed. On page 6 there are four engravings by Aldegrever

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who is another fine German 16th Century artist, and on page 7 it would be an etching by Rembrandt of 1634.

Q. Would you turn the page again to pages 8 and 9. A. On page 8 there is at the top an engraving by Hendrik Goltzius, an important Dutch engraver and painter of the late 16th Century. Below it are three engravings by Heemskerck, another Dutch artist of the 16th Century, and the top row on page 9 again consist of three engravings by Aldegrever dated 1555.

Q. And now pages 10 and 11. [111] A. On page 10 is a woodcut of the early 16th Century from a design by an unknown artist.

On page 11 are two engravings, one by Aldegrever, that is the one on the right, dated 1532, and on the left one by Allaert Claesz, a Dutch artist of the early 16th Century.

Q. And now page 12 and 13. A. The large reproduction on page 12 lapping over onto page 13 is by Lucas Van Leyden, 1519. The most important Dutch artist of the early 16th Century.

The smaller reproduction at the top of page 13 is also by Lucas Van Leyden, and the print in the lower portion on page 13 is once more by Hendrik Goltzius of the late 16th Century. It has a date which I can not quite read without a magnifying glass.

Q. Professor Janson, I ask you now to turn to page—the page immediately preceding page 82 which is not otherwise identified by a page number, but which is page 81. A. I see it.

Q. Would you please examine the illustrative material that is contained in the article in this version of *Lysistrata*. A. Yes, I have done so previously.

Q. Would you identify this particular work as belong to any school of art? A. It is derived from that of a well-known English draftsman [112] of the years around 1900 by the name of Aubrey Beardsley. These drawings actually are by a man named Lindsay, who is not previously known

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to me, but are sort of an adaptation of this style which is often called the "art nouveau" after a French term that has become accepted to characterize this particular style with its rather sort of mannered distortions on emphasis and outline. There are other elements in these drawings, some of them depending on Rubens, such as for instance the Bacchanalian theme on page 95.

Q. Will you now turn to the series of photographs beginning on page 73. A. Yes, indeed.

Q. What is your artistic judgment on the quality of the work on page 73 and the photographs that follow in this essay entitled "Black and White in Color"? A. I think they are outstanding beautifully and artistic photographs. I can not imagine the theme being treated in a more lyrical and delicate manner than it has been done here.

Q. What then are you referring to here? A. I am referring to the theme of interracial love which is, after all, the stated subject of these photographs.

Q. Is sex and love a familiar subject of artistic treatment? A. It certainly is.

Q. Has this been so for very long? [113] A. It has been so since time immemorial, practically, or at least since about 20,000 B. C.

Q. Are there any appropriate classical analogies that you can make to any of the photographic material contained in the article, "Black and White in Color"? A. Yes, indeed. The thing that struck me immediately when I looked through the series of photographs is this extraordinary sense of form and composition of this photographer. I might add here that of course photography in appropriate hands is an artistic instrument and this particular photographer has shown a very great awareness of compositional devices and patterns that have a long and well-established history in western art.

Q. For example. A. In the first photograph, for instance, you see the super-imposition of two profiles which

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is a very old device going back to the Renaissance methods and familiar to all of us from certain British postage stamps, and which has become a symbolic expression of blending together the equivalents of the two people so represented.

Q. Anything else? A. Well, the same impression is conveyed in the photograph on—let me see. These things are not paginated. Well, the full-page photograph of the two eyes, and you will find the [114] same pattern is again very powerfully conveyed in the final full-page photograph.

Q. Has the photographer extracted any artistic qualities out of the use of the Negro and Caucasian subjects?

A. He has, indeed. The very contrast in the color of the two bodies of course has presented him with certain opportunities that he would not have had with two models of the same color, and he has taken rather extraordinary and very delicate advantage of these contrasts.

Q. Have you formed any opinion as to the artistic merits of Eros as a whole? A. I have, indeed.

Q. What is that opinion, Professor? A. I feel that in terms of the material contained therein, in terms of the graphic layout, and the taste displayed in the presentation of this material it is certainly the equal of any magazine being published today.

Mr. Dickstein: No further questions.

Mr. Creamer: I have no questions, Your Honor.

Mr. Dickstein: Thank you very much, Professor.

Mr. Dickstein: Dr. McCormick, would you resume the stand.

Mr. Creamer: I have no questions of Dr. [115] McCormick, either.

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Mr. Dickstein: That's all, Doctor.

* * *

[116] Defendants call Maxine Serett.

LILLIAN MAXINE SERETT, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dickstein:

Q. Mrs. Serett, are you the authoress of "The Housewives' Handbook on Selective Promiscuity"? A. I am.

Q. Would you speak up, please. A. Yes, I am.

Q. You wrote that under the pseudonym Rey Anthony; did you not? A. Yes.

Q. When did you start writing this book? A. I started collecting material about thirteen years ago, and about three years ago I sat down and worked it all up and finished it.

Q. What did you do with the manuscript of the book after you completed it? A. I set it up in type and printed and published it.

Q. Are you in the printing business? A. Yes.

[117] Q. How long before you completed the book did you go into the printing business? A. Around two years.

Q. What is the name of your printing establishment, or publishing establishment? A. Emerson Press is the parent name.

The Court: I did not get the name.

The Witness: Emerson, E-m-e-r-s-o-n, Emerson Press. For the purpose of pamphlets and publications as separate from our printing business we use Seymour Press.

By Mr. Dickstein:

Q. Do you publish "The Housewives' Handbook on Selective Promiscuity" under the label Seymour Press?

A. Yes, but it had a different title.

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The Court: What do you mean, "it had a different title"?

The Witness: The original title was "The Housewives' Handbook for Promiscuity." After one thousand copies we changed the title to the present title.

Mr. Creamer: Is that "Housewives' Handbook for Promiscuity"?

The Witness: Yes.

Mr. Creamer: Thank you.

[118] *By Mr. Dickstein:*

Q. Why did you change the title of your work? A. In order to make it more accurate and more explanatory because we did feel it is a highly discriminating writing and this actually conveyed the message better.

Q. What message were you trying to convey in the original title, or in the title finally adopted? What did you mean to describe by the use of this title? A. I meant to describe that what might appear to be promiscuous to one person with their moral code might not appear to be promiscuous to another person, not judging with the same moral code.

Q. How did you come about to insert "Selective"? A. From discussions with my family and friends.

Q. Is the edition of "The Housewives' Handbook on Selective Promiscuity" published by Documentary Books, Inc., one of the defendants in this case, the same textual matter as the edition of "The Housewives' Handbook on Selective Promiscuity" published by Seymour Press? A. With the exception of one paragraph.

Q. What is that? What is the difference? A. My oldest daughter pointed out in the original press I had not mentioned that she had broken her engagement. It was a

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minor, personal family matter. So, I inserted one paragraph [119] in the copy that is there.

Q. And that is the only differential? A. Yes.

Q. Do you still continue to publish "The Housewives' Handbook on Selective Promiscuity" under the label Seymour Press? A. Yes.

Q. When you first published it how did you go about selling it? A. I just sold it to my friends there in Tucson and called them on the telephone, and just made sales that way for the first few weeks.

Q. About how long ago was this? A. It was in August and September of 1960.

Q. How did you sell the book after that? A. Well, then the people that I know, they suggested that since the doctors there had shown an interest in it that I should send out some sort of mailing to doctors. So, I asked Dr. Robert Ellis if he would write an introduction for us and he did, and we did a reprint of that and we used that introduction, a reprint of the introduction and a letter. That is just what we mailed out to doctors and psychologists, and college professors who are the head of psychology departments.

Q. How did you get the names and addresses of persons to whom you would send these brochures? [120] A. We started out just using the yellow pages of the telephone directories. Then we obtained an A. M. A. directory from a doctor in Tucson, and an A. P. A. directory from a psychologist, and went on from there.

Q. Since October of 1960 approximately how many mailing pieces, that is, brochure material have you sent through the United States mail? A. Something over 400,000.

Q. And approximately how many copies have you sold? A. I think it was a little over 12,000.

Q. How were these copies that you sold delivered? A. They are mailed.

Q. Did you ever receive any re-orders for the book from any doctors or institutions who had purchased it

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initially? A. Yes. There are several doctors. Dr. Brian advertises it in their medical journal out of Los Angeles. Dr. Robert Shaw, Dr. Thomas Wardine, the University of Oregon State Medical School; one of the local ministers in Tucson has purchased eight or ten copies. I assume he either sells them—he says he uses them for counseling, but I imagine he sells some of them because his salary isn't great. There are any number that order five or ten copies at a time.

Q. Have you ever been contacted by officials or representatives of the Post Office Department with regard to your mailing [121] this book or the brochure material?

Mr. Creamer: That is objected to.

By Mr. Dickstein:

Q. —soliciting sales?

Mr. Creamer: That is objected to. I think it is immaterial, irrelevant.

The Court: Sustained.

By Mr. Dickstein:

Q. Mrs. Serett, what was your purpose in writing this book? A. Well, after I read the Kinsey reports I sort of had my belief confirmed that woman's role in sex is widely misunderstood. I hoped that my book written in a language that a lay person can understand could communicate several facts and these would be primarily for women, and one of them would be that the sexual activities and attitudes that the women have are not unusual or unique. They are not different, and another was that various forms of sexual expression are normal and healthy things to do, and also that women do have sexual rights.

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Q. Mrs. Serett, is this a work of fiction? A. No. I have lived every single minute of it.

Mr. Dickstein: No further questions.

The Court: What is the last you said?

The Witness: I have lived every minute of it, or every page of it except the introduction by Dr. Ellis and [122] the introduction by my daughter. That is a postscript.

Mr. Creamer: The Government has no questions, Your Honor.

* * *

[124] Mr. Dickstein: The defendants now call Mr. Dwight Macdonald to the stand.

DWIGHT MACDONALD, SWORN.

Direct examination by Mr. Dickstein:

Q. Mr. Macdonald, where did you receive your college degree? A. Yale in 1928.

Q. What did you do after that? A. Well, I first—I went to—I got a job for six years on Fortune. I was a staff writer on Fortune Magazine, and then I was for another six years an associate editor [125] of Partisan Review, a literary—

Q. What period of time was that? A. The Partisan Review was roughly from '38 to '43.

Q. And what did you do thereafter? A. And then from '43 to '49 I published my own magazine called Politics.

Q. What was the subject matter of Politics? A. Well—

Q. Was it strictly limited to politics? A. No, not at all. It was much broader. It was partly literary and partly sociological. I used "politics" in the Greek sense of Aristotle and so on.

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And after that, '51, on, I have been a staff writer on the New Yorker Magazine.

The Court: On what?

The Witness: The New Yorker Magazine.

By Mr. Dickstein:

Q. Since 1951 have you been associated with any other periodicals or publications? A. Yes, I have been for one year an associate editor of Encounter Magazine which is a literary political magazine in London, and I have been for the last three years the film critic of Esquire Magazine.

[126] Q. Have you ever done film criticisms or articles on motion pictures prior to your association with Esquire Magazine? A. Yes, I first started writing about the movies in 1929. I didn't do regular film criticisms but I wrote articles for various highbrow magazines of very small circulation.

Q. In what publications have your literary criticisms appeared?

Mr. Creamer: Objection, Your Honor. I haven't heard of any literary criticisms so far.

The Court: I missed the question. I was reading something else. Will you repeat it, please?

Mr. Dickstein: I will withdraw the question, Your Honor.

The Court: Very good.

By Mr. Dickstein:

Q. Have you written literary criticisms? A. Yes.

Q. In what publications have your literary criticisms appeared? A. Well, in the Phillips Exeter Monthly, in the Yale Literary Magazine, and the Symposium, of course,

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Partisan Review which is a literary magazine, the Forum, the New Yorker, [127] Encounter. That's all I can think of at the moment.

Q. What about Commentary? A. Oh, yes, Commentary, yes.

Q. What about Esquire? A. No, not in Esquire.

Q. Did you publish a recent article in Esquire Magazine dealing with the New York Times? A. Yes, I did.

Q. What was the subject matter of that article? A. Well, it actually dealt only with the New York Times Sunday Book Review. It didn't deal with the Times in general. It was a criticism of the Sunday Times Book-Review which is our most influential and largest circulation critical journal in this country. It was a criticism of it as being extremely poor.

Q. When did that article appear? A. Well, the issue before last and the issue before that; it was in two.

Q. Have you published any books? A. Yes, I have.

Q. What books have you written and published? A. Well, do you want me to name—well—

Q. Yes. [128] A. "Henry Wallace, the Man and the Myth," "Memoirs of a Revolutionist," "Against the American Grain,"—that's my current book; it is a collection of mostly literary essays written over the last ten years, and I edited an anthology of parodies that Random House published three years ago. I think that's about it.

Q. Have you had any lecturing activities? A. Yes, in the last two years I have had a great deal.

Q. Before what types of groups and covering with subject matters? A. Well, almost entirely before college audiences and covering either the movies or the use of English, that is, English usage really, or the question of mass culture and middlebrow culture, especially mass culture, that's one of my main interests, the influence of mass culture on serious or high culture.

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Q. Before what colleges have you delivered this lecture or these lectures? A. Oh, Yale, Harvard, University of Texas, University—Washington & Lee, Connecticut University, Brandeis, Columbia, University of Chicago. I am going out to the University of California this summer to give a couple of lectures at their invitation.

Q. About how many books a year do you read, Mr. Macdonald? [129] A. Well, it is hard to estimate. I suppose—you mean read fully or read substantially—and I often read a few chapters and then don't go on.

Q. Read as someone engaged in your professional life would read. A. Yes. Well, I suppose that I read either fully or in part, in good part, I suppose about 200 perhaps. It is very hard to know, but I suppose I must read five books a week, I guess.

Q. During the period of time that you have been an observer and a critic of the literary scene have you seen any change or movement in the permissible limits of sexual candor in our literature? A. Yes, I have seen a remarkable change, rather, a remarkable extension of these limits. In fact, it has been especially pronounced in the last five or six years, but perhaps the best way to express it is taking three novels that have been published at different periods.

Kathleen Winsor wrote a cheap and sensational novel called "Forever Amber" which was quite a success at the time because it was allegedly very sexy. When you read that now you really wonder what they thought was sexy in the light of what we have had later. That was about 1946 I would guess.

[130] And then about six or seven years ago another completely untalented lady writer named Grace Metallious wrote a book called "Peyton Place" which went much farther than Kathleen Winsor had and there was no question of suppressing or anything like that.

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And now, just like that we have the old established firm of G. P. Putnam in New York publishing memoirs of a woman of pleasure, a lady of pleasure, otherwise known as "Fanny Hill," which was written in the 18th century and which up to this point has always been considered what is called hard core pornography. I don't personally think it is, but that's another question, but anyway, the fact that a respectable and very old publishing house in New York would publish a book of this kind is extremely significant, so from "Forever Amber" to "Fanny Hill" is quite a stretch.

And then I think that you could—another important change in the last decade or so was the appearance of the famous Kinsey Report. That was about 12 or 13 years ago. The Kinsey Report was very important because it showed that the conventional American morality was one thing and what people actually did sexually was a quite different thing, and I think the Kinsey Report must be to some extent responsible for the rapid liberalization of our standards on these matters [131] in the last decade, and this liberalization has been shown in a whole series of court decisions in different fields.

Q. Well, how does this liberalization as you put it affect the world literature? A. Well, it has affected it—well, I just gave this one example.

Another striking example within the last four or five years is the publication of William Burroughs' "Naked Lunch," which is an extremely, really a sick book. It has a considerable amount of literary merit, and I suppose that was the reason that no legal objection was taken to it. I really was surprised because "Naked Lunch" had always been published under the counter even in Paris and so on.

That's one, and then another example is the publication of Henry Miller's "Tropic of Cancer" which was banned from this country, of course, and another one was the publication of "Lady Chatterley's Lover" by D. H. Lawrence.

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[132] *By Mr. Dickstein:*

Q. To your knowledge, is "Naked Lunch" freely distributed and available throughout most of the United States?

Mr. Creamer: That is objected to, Your Honor. I think it is irrelevant and immaterial.

The Court: We will hear it. Objection overruled.

The Witness: Sir?

The Witness: Well, I don't know.

By Mr. Dickstein:

Q. Do you go in many bookstores, Mr. Macdonald? A. Yes, but I don't remember seeing "Naked Lunch" there. I see the other two, but not "Naked Lunch."

Q. What about "Trophic of Cancer"? A. Oh, heavens, that was everywhere for a while. You couldn't walk into any drug store anywhere without seeing the blue covers. They had a red seal, as I remember. In fact, on trains the train butcher would go through with "Life" and "Time" and the "New Yorker," and right in front a couple of copies of Henry Miller's sex book, so to speak, which was very ironical, because, from a literary point of view, it is an advanced novel, and the fact that they would be able to sell it on trains, really—

[133] Q. What about "Lady Chatterly's Lover"; was that freely sold throughout the United States? A. Yes, and certainly, to my knowledge, in England—in England, in fact, the year it came out, there were two best sellers in England, and one of them was the Penguin edition of "Lady Chatterley's Lover," and the other was the "Oxford New Translation of the Bible." These were the two top best sellers.

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Q. Mr. Macdonald, as an observer of the literary scene have you also seen some dynamics in the sense in which you have been testifying in the field of periodical publications in, let us say, the time since the revocation of "Esquire's" 2nd-class mail permit in 1954 to the present day? A. Yes, I have, yes. Of course, the post office's attempt there to deny "Esquire" mailing privileges and thus, in effect, make it impossible to publish it was turned back by the courts. The reason that the—I suppose the reason for this prosecution of "Esquire" at that time was that "Esquire" at that time was still publishing the so-called Petty girls and Varga girls which seemed to me rather mild, but I don't know any other possibility. But now you have freely circulated throughout the United States a whole series of girly magazines, so called. "Playboy" was the first one, and "Playboy" now has a 2,000,000 circulation, and of course, has started all these ridiculous Playboy Clubs, and is a tremendous success. I should say, [134] judging by the ones I have noticed on the New York newsstands and elsewhere there must be between twenty and thirty of these that come out every month, and their main purpose is to purvey from six to twelve nude, colored nude pictures of models. A few years ago, six or seven years ago—I am a student of mass culture. I follow all these phenomena, and the girly magazines then, I think the models had to wear brassieres and panties, and now they don't have to wear brassieres. I mean, they can expose their bosoms now. Of course, they have to—I mean, they can't be actually nude from the front, anyway, but that will perhaps come.

Q. Have you seen any movement of a similar nature in the motion pictures that the American public sees? A. Yes. In the motion picture it is especially notable because of the fact that after the Fatty Arbuckle scandal in the twenties Hollywood got on Will Hayes to clean it up and become the czar, and Hayes introduced the so-

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called "Hayes Code" which, as you know, is a code of morality, what could and could not be shown in the movies. It is extremely explicit about both in a physical sense that can be exposed on the body, and also in a plot. The Hayes Code says you can not show two people living together who are not married.

Q. Did it also say you couldn't show a husband and wife in a single bed? [135] A. Yes, as I recall it. Oh, yes, not people of the opposite sexes at all. Anyway, the Hayes Code now has been called the Hayes-Breen Code, Breen succeeding Hayes. Well, when was "The Outlaw," the Jane Russell picture that Howard Hughes produced? I would say that was about twelve to fifteen years ago. "The Outlaw" was the first picture to defy the code and thus not get a seal of—the Motion Picture Producers' Association gives a seal that is all right to circulate. Hughes more or less got away with it. He made money on the film, but since then "The Outlaw" now seems very mild compared to what is permitted. The Hayes-Breen Code in the last four or five years has been completely riddled. It hardly exists any more. In fact, I saw a movie about a year ago and reviewed it in "Esquire" called "Cape Fear" which is distributed. I think it even had a seal. The point of the movie is the harassment, sexually and sadistically, of a mother and her eleven-year-old daughter by a really morally degenerate ex-convict who wants to revenge himself on the father who had him sent to prison. The climactic scene obviously suggests that he gets each the girl separately and the mother in a remote country district and it is obviously suggests that he rapes them. Of course, they cut it short. The girl gets away some way or other, and the husband comes along just in time, but this would never have been allowed a few years ago. I am not so sure it should be allowed [136] now, this particular picture.

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Q. Because it is a bad movie? A. No. It was rather well directed. I don't mind sexuality, but I think the sadistics in it is one of the main points of pornography, and is what I objected to.

Q. Have you seen the motion picture "Irma La Douce"? A. Yes, a press preview about a week ago.

Q. What is the subject matter of that? A. Prostitution.

Q. Have you seen the motion picture "Never On Sunday"? A. Yes.

Q. What is the subject matter of that motion picture?

A. The same. Of course, the difference is that was made abroad and didn't need any Academy seal. Furthermore, "Irma La Douce" treats prostitution in a light way. It is not a very awful film, really, except that it does open with three scenes of Shirley McLaine before and after her transacting with her customers. There is no question about what was happening, and in fact, the whole dialogue points it up.

Q. Can you point to any other motion pictures which illustrate this? A. Well, of imported films which are freely shown in this country, "Phaedra," which has a very explicit scene of sexual intercourse. I mean explicit in the sense it is, of course, [137] done through flames and water and so on, but still—and "The Lovers," I think that has been banned in a few states, and, well—transvestism is obviously the main theme of the Marilyn Monroe movie, "Some Like It Hot," that Billy Wilder made three or four years ago. I mean, these two men dress up as members of a women's band in order to escape bandits, but still it is—

Q. Mr. Macdonald, have you ever read "The Housewife's Handbook of Selective Promiscuity"? A. Yes, I have.

Q. In your opinion, does "The Housewife's Handbook" go substantially beyond the customary limits of candor

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that society, American society, our country, permits in its literature at this particular point of time?

Mr. Creamer: I object, Your Honor, on the basis that this witness is not qualified to testify as to the community standards as stated in the question.

The Court: I will permit it. The value of the testimony will be up to me considering the background.

Mr. Creamer: And it is also a part of the ultimate question.

The Court: That's right. Objection overruled. Exception noted for the United States.

The Witness: Well, speaking as a long-time [138] student of mass culture in American society I would say it does not.

By Mr. Dickstein:

Q. Have you seen "Liaison" Volume 1, No. 1? A. May I add something to the other reply?

Q. Please. A. I must also say, quite frankly, that I consider it not a particularly interesting book. It has no literary value, I would say. I think its only importance would be as a case history which certain doctors and gynecologists and so on would find of interest, but I don't want to be put in a position—I was going to compare it with "Lady Chatterley's Lover," saying it is more explicit than this, and this is true. On the other hand, "Lady Chatterley's Lover" certainly is a work of literary art. This is not.

Q. Was it your statement that you had read "Liaison" Volume 1, Issue 1? A. Yes, I have.

Q. Based upon your observations of the literary scene and the particular place we are in our culture today,

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would you say that Volume 1, No. 1, goes substantially beyond the customary limits of candor which we tolerate today in describing or discussing sexual matters?

Mr. Creamer: Objection, Your Honor, on the [139] grounds as stated.

The Court: Overruled.

The Witness: No, I would not, but I must also add that I think it was an extremely tasteless, vulgar and repulsive issue. Later issues, I have looked through the whole file. Later issues seem completely unobjectionable even from that point of view, but the fact that it is tasteless and vulgar doesn't, in my mind, make it obscene or pornographic.

By Mr. Dickstein:

Q. Is it within the limits of sexual discussion that we see in other works and material that is freely circulated within the United States? A. I am sorry. Is it what?

Mr. Dickstein: Would you read the question?
(The last question was read by the reporter.)

By Mr. Dickstein:

Q. Is it within the boundaries of that; is it within the limit of that material? A. Is what within the limit?

Q. We are still speaking of "Liaison." A. Oh, I am sorry. Oh, yes. Yes, I would say so. Yes.

Q. Have you read "Eros"? A. Yes, I have.

Q. And by "Eros" I am speaking of Volume 1, No. 4. [140] A. Yes, I have read that.

Q. In your opinion, does "Eros" No. 4 go substantially beyond the customary limits of candor that we in

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our country now tolerate and accept in discussion of sexual matters? A. No. I should say it goes considerably this side of it.

Q. By "this side," you mean considerably within those limits? A. I mean the safe side, the legal side, the nice side.

Q. Mr. Macdonald, would you turn with me to the table of contents of "Eros" Volume 1, No. 4.

The Court: I did not hear the page.

Mr. Dickstein: The table of contents, which would be the first page, Your Honor.

The Court: Thank you.

By Mr. Dickstein:

Q. Referring to that table of contents would you indicate the items that appear in this issue of "Eros" which you believe have significance or note for some literary merit. A. Yes. In fact, I have prepared—since I knew I couldn't remember them—I have prepared a list of them.

Mr. Creamer: If Your Honor please, if the witness is going to read from something I would appreciate it if I may see it first.

The Court: You may do so.

[141] *By Mr. Dickstein:*

Q. Could you do it with the table of contents without your notes and referring back to the publication, if it is necessary for you to refresh yourself on that A. Well, do you want me just to go through it and sort of say—

Q. Yes. A. You want to know the serious and positive things. Well I would say the first, "Love in the Bible" is a series of magnificently reproduced and extremely

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good Medieval and Renaissance woodcuts which I see not only no objection to, but it is a beautiful portfolio.

The next thing is "The Jewel Box Revue", which is some candid-camera shots in color of a revue in which the men are all female impersonators, and obviously homosexuals, I suppose. I thought that was very good, too, and good and interesting pictures.

"The Letter from Allen Ginsberg" is next, which I thought was witty and well expressed, and very typical of Allen Ginsberg.

Q. Who is Allen Ginsberg? A. He is the leading so-called "beat" poet, and has a considerable reputation, I would say, as a poet.

"Was Shakespeare a Homosexual?" was the next [142] article. I have no objection to that from an obscene point of view, but I thought it was a mediocre article.

Q. I am just asking you to characterize— A. Well, oh, the good ones? Yes.

Well, the next thing there was a rather witty thing, "New Twists on Three Great Trysts", which was humorous.

"The Natural Superiority of Women as Eroticists" by Drs. Eberhard W. and Phyllis C. Kronhausen, I thought an extremely interesting and important study with some remarkable quotations from the woman who had put down her sense of love-making, of sexual intercourse, are in an extremely eloquent way. I have never seen this from the woman's point of view. I thought the point they made, the difference between the man's and the woman's approach to sexual intercourse was very well made and very important.

Then "Black and White in Color. A Photographic Tone Poem", by Ralph M. Hattersley, Jr. I suppose if you object to the idea of a Negro and a white person having sex together, then, of course, you would be horrified by it. I don't. From the artistic point of view I thought it was

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very good. In fact, I thought it was done with great taste, and I don't know how to say it—I never heard of him before, but he is obviously an extremely competent and accomplished photographer.

Finally, a sort of adaptation of "Lysistrata" [143] by Aristophanes, an adaptation by Ivan Granzni, I thought was very amusing, and certainly no more outspoken than Dudley Fitz's full translation of the same play which I compared it with recently just for fun.

Q. Is the Dudley Fitz translation freely available in the United States for the American public? A. Oh, yes.

Q. Has it been used in schools? A. Oh, I don't know. I would assume so. Fitz himself is a schoolteacher.

Q. How long has it been in circulation in the United States, to your knowledge? A. I really have no idea. It is not recent. Again, I think I must, if you don't mind, add to what I have said, because I don't want to give the impression that I consider this is all of this issue.

Q. No, I just asked whether or not— A. Well, yes. If you asked me now not specifically, but what else I think about it, I would appreciate it.

Q. I take it there are articles in here that you don't think are of great literary merit? A. Yes. There are a considerable number that, it seems to me, are either rather trivial or poor, and at least one that I consider not worth—"Bawdy Limericks" I don't think are terribly [144] funny, and I think quite vulgar, but again I don't think they are obscene or pornographic.

Q. Would you agree that some people might consider them funny?

Mr. Creamer: That is objected to, your Honor.

The Witness: Well, yes.

By Mr. Dickstein:

Q. Mr. Macdonald, is it not a characteristic of periodicals that going from article to article one can see a fluctuating level of quality regardless of the publication?

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Mr. Creamer: I object, your Honor. I have permitted leading quite a bit, but I really don't think he should lead that much. It is a leading question, and therefore I object.

Mr. Dickstein: Your Honor, I will withdraw the question. I would at this time want to offer in evidence a book entitled "Memoirs of a Woman of Pleasure" by Peter Quennell, published by Putnam and discussed by Mr. Macdonald during the course of his direct testimony.

The Court: You are offering to have it marked?

Mr. Dickstein: I am asking that it be marked for identification.

(Book entitled "Memoirs of a Woman of Pleasure" was marked Exhibit D-9 for identification).

[145] Mr. Dickstein: We offer it in evidence, your Honor.

Mr. Creamer: I object on the basis of my objection yesterday. It is immaterial and not relevant.

The Court: Admitted.

Exception noted.

(Exhibit D-9 received in evidence).

Mr. Dickstein: No further questions.

[146] Mr. Creamer: The Government has no questions, your Honor.

The Court: Thank you, sir.

Mr. Dickstein: The defendants call Arthur Galligan as a witness.

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ARTHUR J. GALLIGAN, SWORN.

Direct examination by Mr. Dickstein:

Q. Mr. Galligan, are you an attorney? A. Yes, sir.

Q. In what jurisdictions are you admitted? A. I am sorry; I didn't hear the question.

Q. In what jurisdictions are you admitted? A. New York and the District of Columbia.

Q. Are you my law partner? A. Yes, sir.

Mr. Creamer: If your Honor please, I request an offer of proof.

The Court: I don't believe it will be necessary in view of the fact that we do not have a jury present.

Mr. Creamer: Very well.

[147] The Court: Whenever you feel that you should object to anything, say so.

Mr. Creamer: Thank you, sir.

The Court: We will rule on problems as they arise.

By Mr. Dickstein:

Q. Did you at my request go about purchasing certain books or go about purchasing certain books and periodicals which were visibly and freely available on newstands, in book stores and other places? A. Yes, sir.

Q. Where did you start your activities? A. New York City.

Q. And where did you go to purchase such books and periodicals? A. I went first to Grand Central Terminal which, as you know, is New York Central Railroad Terminal.

Mr. Creamer: Pardon me, your Honor, not to interrupt the witness, but I would like to object at

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this time because it seems to me we are going to an immaterial and irrelevant area to the purchase of books and magazines.

Mr. Shapiro: Your Honor, it doesn't go to the particular location of purchase but to the free availability of the material we are about to offer for purposes of identification. [148] This is preliminary to our offer of this kind of material.

The Court: Exception noted. We will receive it.

By Mr. Dickstein:

Q. Where did you go within Grand Central Station? A. The Union News stand of which there are many, but right off the main concourse where the passengers who are embarking or disembarking from various trains pass by, from the ticket counter to the tracks, from the Hotel Commodore, passing through the station to exit to the street. Then right outside of the terminal entrance to the Hotel Commodore there is a bookstore called the—well, it is a combination book and card store—called the Beaumart Card & Gift Shop.

Q. May we hold that for a moment?

Did you make any purchases at the Union Newsstand?

A. Yes, sir.

Q. Do you have that material with you? A. Yes, I do.

Q. May we have it, please? A. This magazine called "Rogue" and this book called "Waterfront Blonde" are the two purchases I made at that point.

Q. This is Rogue, issue of May, 1963; is that correct?

A. Yes, sir.

[149] Q. Were both of these openly displayed on the newsstand? A. Yes, sir.

The Court: What is the second book?

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Mr. Dickstein: "Waterfront Blonde."

The Court: "Waterfront"?

Mr. Dickstein: We ask that that be marked as—

The Court: What issue, May or June?

The Witness: No, it is a book.

Mr. Dickstein: It is a book.

We ask that that be marked as Defendant's Exhibit 10 for identification.

("Waterfront Blonde" was marked Exhibit D-10 for identification.)

("Rogue" Magazine was marked Exhibit D-11 for identification.)

By Mr. Dickstein:

Q. Where did you go after you left the Union Newstand?

A. I then went to the Beaumart Card & Gift Shop which I just described which is outside the entrance to the Hotel Commodore.

Q. Did you make any purchase there? A. Yes, sir, I did.

Q. Do you have that material with you? [150] A. Yes, sir, I do.

Q. You have just handed me six pocket books, have you not? A. Yes, sir. Would you like me to read the titles?

Q. No, I will, so the reporter can identify them simultaneously.

Were each of these pocket books freely displayed, openly displayed in that shop? A. Very prominently displayed. As a matter of fact, they could be seen through the glass window. People passing by the passageway leading from the main concourse to the Hotel Commodore—

Mr. Dickstein: We would like to have marked for identification as Defendant's Exhibit D-12 a book entitled "Gang Girl," one of the books that Mr. Galligan has just handed me.

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The Court: "Gang"?

Mr. Dickstein: "Gang Girl."

("Gang Girl" was marked Exhibit D-12 for identification.)

Mr. Dickstein: And as Exhibit D-13 a book entitled "The Sucker," another volume that Mr. Galligan has just handed be.

("The Sucker" was marked Exhibit D-13 for identification.)

[151] Mr. Dickstein: As Exhibit D-14 a book entitled "Pushover," one of the other books that Mr. Galligan has handed me.

("Pushover" was marked Exhibit D-14 for identification.)

Mr. Dickstein: As Exhibit D-15 "Rock-N-Roll Gal."

("Rock-N-Roll Gal" was marked Exhibit D-15 for identification.)

Mr. Dickstein: As Exhibit D-16 a book entitled "They Couldn't Say No."

("They Couldn't Say No" was marked Exhibit D-16 for identification.)

Mr. Dickstein: As Exhibit D-17 a book entitled "Wild Body."

("Wild Body" was marked Exhibit D-17 for identification.)

By Mr. Dickstein:

Q. Where did you go after the Beaumart Book Shop?

A. I left Grand Central Station and I walked over to the

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vicinity of the New York Public Library at 5th Avenue and 42nd Street.

Q. And did you go to any newstand in that area? A. Yes, sir, there are three newstands actually on the [152] south side of 42nd Street between Fifth and Sixth Avenue which are the two blocks which encompass the New York Public Library.

Q. And did you make any purchases at those newstands?

A. I did, sir.

Q. Was that of material which was all freely and openly displayed at those newsstands? A. It certainly was.

Q. Do you have that material with you? A. I do.

Q. May we have it, please? A. This material I purchased at the newsstand closest to Fifth Avenue on the south side of 42nd Street right outside the side entrance to the New York Public Library.

Mr. Dickstein: Will the record note that Mr. Galligan has just handed me a number of magazines and I will separately identify them for the record.

As Defendant's Exhibit D-18 for identification, a periodical entitled "Nymph," issue No. 5.

("Nymph," Issue No. 5, was marked Exhibit D-18 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-19 a periodical entitled "Tic-Toc," Volume 1, issue No. 2.

[153] ("Tic-Toc," Volume 1, Issue No. 2, was marked Exhibit D-19 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-20 a periodical entitled "Pastime," Volume 2, No. 5.

("Pastime," Volume 2, No. 5, was marked Exhibit D-20 for identification.)

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Mr. Dickstein: As Exhibit D-21 for identification a periodical entitled "Adam," Volume 7, No. 6.

("Adam," Volume 7, No. 6, was marked Exhibit D-21 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-22 for identification a periodical entitled "Satan's Scrap Book," Volume 1, No. 1.

("Satan's Scrap Book," Volume 1, No. 1, was marked Exhibit D-22 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-23 for identification a periodical entitled "Kiss," No. 2.

("Kiss," No. 2, was marked Exhibit D-23 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-24 for identification a periodical entitled "Stark," Volume 1, No. 1.

("Stark," Volume 1, No. 1, was marked Exhibit [154] D-24 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-25 for identification a periodical entitled "French Frills," Volume 2, No. 5.

("French Frills," Volume 2, No. 5, was marked Exhibit D-25 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-26 for identification a periodical entitled "Hip and Toe," having no other identification.

Oh, I am sorry, inside on page 3 it is identified as Volume 1, No. 2.

("Hip and Toe," Volume 1, No. 2, was marked Exhibit D-26 for identification.)

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Mr. Dickstein: As Defendant's Exhibit D-27 for identification a periodical entitled "Vue," July issue.

("Vue," July issue, was marked Exhibit D-27 for identification.)

Mr. Dickstein: As Exhibit D-28 for identification a periodical entitled "Photo Button," Series 7.

("Photo Button," Series 7, was marked Exhibit D-28 for identification.)

Mr. Dickstein: As Exhibit D-29 for identification a publication called "Treasure Box Revue," Series 18.

[155] ("Treasure Box Revue," Series 18, was marked Exhibit D-29 for identification.)

Mr. Dickstein: As⁴ D-30 for identification the same publication title, Series 19.

("Treasure Box Revue," Series 19, was marked Exhibit D-30 for identification.)

By Mr. Dickstein:

Q. Where did you go after had made these purchases at that particular newsstand? A. I moved down 42nd Street to the newsstand closest to Sixth Avenue which, however, is still on the east side of Sixth Avenue and adjacent to Bryant Park which is right behind the Public Library.

Q. Did you make any purchases there? A. Yes, sir.

Q. May I have that material, please?

The Court: I assume you object? The same ruling.

Mr. Creamer: Yes. He hasn't offered any of these as yet, so I reserve my objection.

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The Court: All right.

Mr. Creamer: I wonder if we could, to save time, leaf through some of these others.

[156] The Court: We will have a recess as soon as all of these are marked because I realize that.

How many more do you have? How many more are you identifying in round numbers?

Mr. Dickstein: It looks like about 15 pieces, Your Honor.

Would the record note that Mr. Galligan has just handed me three periodicals. We ask that they be marked.

As Defendant's Exhibit 31 a periodical entitled "Tip-Top," Volume 2, No. 6.

("Tip-Top," Volume 2, No. 6, was marked Exhibit D-31 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-32 for identification a periodical entitled "Snap," Volume 3, No. 2.

("Snap" Volume 3, No. 2, was marked Exhibit D-32 for identification.)

Mr. Dickstein: As Defendant's Exhibit D-33 for identification a periodical entitled "Twilight," No. 3.

("Twilight," No. 3, was marked Exhibit D-33 for identification.)

By Mr. Dickstein:

Q. Where did you go then, Mr. Galligan? [157] A. From there I went across the street, across Sixth Avenue, still on the south side of 42nd Street, to a bookstore which was about one or two doors removed from the corner, a prominent paperback book store in that location.

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Q. After you completed your trip to New York did you come to Philadelphia? A. Yes, sir, I did.

Q. And did you make any similar purchase to newsstands or bookstores in the City of Philadelphia? A. Yes, sir, I did.

Q. Where did you go first? A. Just one minute, please. My first stop in Philadelphia was at a newsstand on what I believe is the southeast corner of 15th and Market Streets.

Q. Did you make certain purchases at that newsstand? A. Yes, sir, I did.

Q. Was this all material that was on open display on that newsstand? A. It was, sir, some of it.

Q. May I have it please? A. You say "some." I mean this was some of the material on display.

Q. There was other material? [158] A. There was other material.

Q. Similarly on display; is that correct? A. Correct.

Mr. Dickstein: Would the record note that Mr. Galligan has just handed me five periodicals.

We ask to mark for identification as Exhibit D-34 a periodical called "Zoftick," Volume 2, No. 1.

("Zoftick," Volume 2, No. 1, was marked Exhibit D-34 for identification.)

Mr. Dickstein: As Exhibit D-35 for identification a periodical called "Ruby," Volume 1, Issue 1.

("Ruby," Volume 1, Issue 1, was marked Exhibit D-35 for identification.)

Mr. Dickstein: As Exhibit D-36 for identification a periodical entitled "Torch," Volume 2, Issue 1.

("Torch," Volume 2, Issue 1, was marked Exhibit D-36 for identification.)

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Mr. Dickstein: As Exhibit D-37 for identification a periodical entitled "Nude World," Issue No. 6.

("Nude World," Issue No. 6, was marked Exhibit D-37 for identification.)

Mr. Dickstein: As D-38 for identification a periodical entitled "Gymnos," issue of July, 1963.

[159] ("Gymnos," issue of July, 1963, was marked Exhibit D-38 for identification.)

The Court: We will take a ten-minute recess.

(A short recess was taken at 11:00 o'clock A.M.)

[160] *By Mr. Dickstein:*

Q. Where did you go in the City of Philadelphia after that, Mr. Galligan? A. I went to the Mid-City Bookshops located at Ranstead Street and 15th Street.

Q. And did you purchase certain material there? A. Yes, sir, I purchased this book.

Q. Was this book openly displayed in that bookstore? A. Yes, sir.

Q. Along with other material? A. Yes.

Mr. Dickstein: Would the record note that Mr. Galligan has just handed me a book which is actually two books bound in a single cover. One is called "The Wrong Turn," and the other is called "Season of Love." We ask that it be marked for identification as Exhibit D-39.

(A book, double volume, "The Wrong Turn," "Season of Love," was marked Exhibit D-39 for identification.)

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By Mr. Dickstein:

Q. Where did you go then? A. I then stopped at a newsstand at 11th and Chestnut.

Q. And did you purchase certain material there? A. Yes, sir, I did, these three magazines.

Q. Were these three magazines openly displayed on this newsstand? [161] A. Yes.

Mr. Dickstein: Would the reporter show that Mr. Galligan has just handed me the three magazines to which he refers. The first one is "Escapade," August issue. We ask that that be marked for identification as Exhibit D-40.

(A magazine entitled "Escapade," August issue, was marked Exhibit D-40 for identification.)

Mr. Dickstein: The next is "Cavalcade," August 1963. We ask that it be marked for identification as Exhibit D-41.

(A magazine entitled "Cavalcade," August 1963, was marked Exhibit D-41 for identification.)

Mr. Dickstein: The next one is "Scamp," September. We ask that it be marked for identification as D-42.

(A magazine entitled "Scamp," September, was marked Exhibit D-42 for identification.)

By Mr. Dickstein:

Q. Where did you go then? A. I then went to a store entitled, or with the name on the outside, "Discount Books, Inc." also located at 11th and Chestnut.

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Q. Did you purchase anything there? A. Yes. I made this selection from a counter which had on [162] display several hundred magazines of similar type.

Mr. Dickstein: Mr. Galligan has just handed me a periodical called "MR.," annual, spring 1962, which I ask be marked for identification as D-43.

(A magazine entitled "MR.," spring 1962, was marked Exhibit D-43 for identification.)

By Mr. Dickstein:

Q. Where did you go then? A. I then went to another discount bookstore located right here on Market, right down from the courthouse. I am not quite sure of the streets, but it is on the way down to the H. L. Green 5 & 10 Cent Store.

Q. Did you examine the material that was openly on display and available for purchase in that bookstore? A. Yes, sir. The counter, which is their display device, contained the same material that was in the discount bookstore that I previously testified to. There were hundreds and hundreds of these magazines, back-date issues, and so on.

Q. Did you make any additional purchases there? A. No, sir. They were pretty much duplicatory of what I had already seen.

Mr. Dickstein: We now offer in evidence Defendants' Exhibits D-11 through and including D-43.

Mr. Creamer: Objected to, your Honor, on the [163] grounds that these exhibits are irrelevant and immaterial in the case at issue.

The Court: What about D-10?

Mr. Dickstein: I am sorry your Honor. I thought the series started at D-11.

Colloquy of Court and Counsel

The Court: D-10, "Waterfront Blonde."

Mr. Dickstein: Yes. It would start at D-10.

Mr. Shapiro: Do you want to hear from defense counsel on this?

The Court: I believe you will probably say the same thing you said on the other books. What do you plan to say?

Mr. Shapiro: I plan to say somewhat more with respect to this particular material, your Honor.

The Court: You may do it.

Mr. Shapiro: I would like to call the Court's attention to the concurring opinion of Mr. Justice Harlan in *Smith* against California, a case we examined yesterday. I think that the admissibility of this particular material we are talking about now hinges on the understanding of a due-process concept. This is what Justice Harlan says:

This means, regardless of the element of the offense under state law, the Fourteenth Amendment does not permit a conviction such as was obtained [164] here unless the work complained of is found substantially to exceed the limit of candor set by contemporary community standards. The community can not, where liberty of speech and press are at issue, condemn that which is generally tolerated. This being so, it follows that due process, using that term in its primary sense of an opportunity to be heard and to defend a substantive right, requires a state to allow a litigant in some manner to introduce proof on this score while a state is not debarred from regarding the tryer of fact of the embodiment of community standard competent to judge the challenged work against those standards, it is not privileged to rebuff all efforts to enlighten or persuade the tryer.

Colloquy of Court and Counsel

What we are saying, it seems to me here in this case, and in Judge Harlan's opinion in *Manual Enterprises against Day*, which hinged on the concept of patent defensiveness which is to be measured under the federal statute by national community standards, is that if the communities, if the nation tolerates material in terms of offensiveness which is more or similarly offensive than the material which has been indicted, then it is quite clear that under the statute the indicted material can not be found objectionable because due [165] process, as Mr. Harlan points out, can not condemn where liberty of speech and press are at issue, that which it generally tolerates, and this goes to proof of what the community generally tolerates. For that reason we say it is admissible.

Mr. Creamer: If your Honor please, I believe that this is completely non sequitur. That is, to assume that the community tolerates this type of material just because it happens to be published and on the newsstands today, I think doesn't necessarily follow. We have had some dynamic flow and change in the law in the past five years, and just because certain things are being published in no way indicates that the community is tolerating them. There is certainly probably a mass of material in the other direction, and I am sure there is an article in the recent *Saturday Evening Post* concerning just this very problem, how it seems to have escaped the purvey of the law because of the sudden change in law. I in no way feel this indicates any tolerance of society for this type of publication.

The Court: I think that I will receive them, and then I ask that both of you re-argue that before me in your final speeches.

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Mr. Creamer: Thank you.

The Court: But I will let in the evidence, and, therefore, all the exhibits beginning with D-10, "Waterfront [166] Blonde," down to and including D-43, "MR." are admitted.

(Exhibits D-10 through D-43 received in evidence.)

Mr. Dickstein: No further questions.

Mr. Creamer: No questions.

Mr. Dickstein: Defendants call Dr. Peter G. Bennett to the witness stand.

PETER G. BENNETT, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dickstein:

Q. Dr. Bennett, where did you receive your education?

A. My medical education at the University of Pennsylvania.

Q. Where did you receive your pre-medical education?

A. Haverford College.

Q. Pardon me? A. Haverford College.

Q. When did you graduate from the University of Pennsylvania Medical School? A. 1952.

Q. And what did you do then, sir? [167] A. I took a year of internship at Philadelphia General Hospital, and three years of psychiatric residency under the Philadelphia VA Dean's Committee.

Q. You are now a practicing psychiatrist? A. That's right.

Q. Have you also had training in analysis? A. Yes, I have.

Q. Where was that? A. At the Philadelphia Psychoanalytic Institute in Philadelphia.

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Q. Are you a member of any professional organizations?

A. I am a member of the American Psychiatric Association; the Philadelphia Psychoanalytic Society; the Philadelphia County Psychiatric Society.

Q. Are you presently associated with the University of Pennsylvania School of Medicine and Psychiatry as an instructor? A. That is correct, in the department of psychiatry, section for preventive psychiatry.

Q. Dr. Bennett, can you define pornography for us in psychiatric terms? A. I would like to try. I believe I can if I can make clear the specific psychological effects of pornography on the human mind. What I wish to show is that pornography is not simply an intense stimulation of erotic feelings, although this is part [168] of pornography—

Mr. Creamer: Pardon me. Is the doctor reading?

The Witness: I am referring to notes that I made last night.

Mr. Creamer: I wonder if I would be permitted to see them?

The Court: You may see them.

(The notes were handed to Mr. Creamer.)

Mr. Creamer: Your Honor, I request a voir dire of this witness with regard to this statement.

The Court: All right.

Cross-examination by Mr. Creamer:

Q. Dr. Bennett, who prepared this statement? A. I prepared it myself.

Q. Is there any reason why you couldn't testify without reading from a text? A. Yes.

Q. And what is that, sir? A. Because it is a complicated discussion and I want to—

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The Court: Keep your voice up, because that gentleman over there must hear you, as well as the man in [169] front of you.

The Witness: Certainly.

Because it is a complicated, technical discussion which I am trying to make simple and avoid the use of an excessive amount of psychiatric terminology. I felt that—I do feel that I can make it a lot clearer and a lot more succinct if I refer to the text that you have there. I am willing to testify without it, but I believe it would be a lot clearer with it.

By Mr. Creamer:

Q. Are all of the ideas and expressions in here your own, or did you discuss this request generally with anyone before you prepared this statement? A. Certainly I have discussed it.

Q. And with whom did you discuss it? A. Well, I have discussed it with the attorneys, among other people.

Q. Did you make a number of drafts before you hit upon this statement? A. This is the only draft I—I made another copy which I revised myself at my own—because I wanted to myself, not because I was asked to.

Q. Did the attorneys indicate any areas that they wanted changed, or was anything changed in your initial statement [170] then as is reflected here? A. They didn't indicate that they wanted anything changed. They questioned two points, I believe, that were not clear. I feel that I clarified them.

Q. How many times did you discuss with the attorneys in this case your testimony in this particular document? A. This particular document they haven't seen before ten minutes ago, but the—well, the original copy which is what you are referring to they saw yesterday.

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Q. Yes. A. And we discussed it once at that time. Then prior to that we also discussed the case in general and what I would be called upon to testify concerning, but not this particular document because it hadn't been written at that time.

Q. And what were the changes that you made? Do you have your original document with you, the original draft of this statement? A. I am not sure. I think I do.

Q. Do you recall the changes that were made in the statement? A. Yes.

Q. And what were they? A. Well, in the first paragraph I did not make as clear a distinction between what I am now going to make, a distinction between erotic—the stimulation of erotic feelings per se [171] and pornography as I could have, and actually this is not as a result of their having told me this. I realized this in presenting it to them, and this is why I changed this first paragraph. The only other change that came as a result of our discussion was the elimination of two words which were merely qualifying adjectives which I decided did not accurately portray what I meant.

Mr. Creamer: No objection, Your Honor.

By Mr. Dickstein:

Q. Would you resume your testimony, please, Dr. Bennett.

The Court: Will you start at the beginning, please.

The Witness: Yes. As I was saying, I believe I can make clear the specific psychological effects of pornography on the human mind. What I wish to show is "that pornography is not simply an intense stimulation of erotic feelings. It includes this, of course, but erotic stimulation of itself is definitely

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not harmful or disturbing to the ordinary mature adult, whereas pornography has, always, in addition a disturbing disintegrative influence even on the mature person which is almost impossible to resist and which abrades the conscience causing morbid feelings of shame and guilt."

In order to understand the effect of pornography on the human psyche, one must realize that the mind in an extremely [172] sensitive system of checks and balances with many and diverse internal needs and many demands from the external world to attend to. In the average mentally healthy person the functioning of the mind is deceptively smooth, but in everyone there are certain inherent weak points at which a strong external influence can upset the equilibrium. Some of these weak points are specific to the individual and largely attributable to the vagaries and traumatic events of the individual's early childhood. Other weaknesses are actually inherent in the complex make-up of the human psyche and in this sense they are constitutional. Pornography has its morbid effect through both types of weaknesses, although it is the effect on the constitutional type of weakness that I place the most emphasis since it is universal.

First I will describe the weakness which is the result of individual childhood experience, which I will call the specific emotional vulnerability. This is a sort of emotional Achille's heel. Individual conflicts are present in almost everyone, but they are successfully repressed and the emotional irritant is avoided so that there is no clinical evidence of neurosis or mental illness. Nevertheless, in vast social upheavals such as World War II, psychiatrists found that everyone has his breaking point. The prospector who has always been his own boss and can stand

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any physical hardship breaks [173] down when he is placed under unreasonable authority from which there is no escape. The clerk who needs to be told what to do can not function on a lonely patrol where he must make his own decisions. Each has his own specific emotional vulnerability, although they are very different.

A common type of specific emotional vulnerability in our society exists in the area of the sexual drives. It is the remnant of the so-called Victorian attitude toward sex which is fortunately gradually disappearing but still very much a factor in most psychic make-ups. Because children are not informed accurately and naturally about sexual processes when their questions arise, that is ages three, four, five and six, they assume that their questions are naughty and that their sexual curiosity is bad. This only whets the child's curiosity, although the child usually stops asking the questions, and the curiosity itself may be repressed as he grows into adulthood. For a minority, even healthy sex, scientific discussion of sexual processes, and trivial humor on a sexual theme is disturbing. Of course, such persons are violently disturbed by pornography, should they happen upon it, but one can not distinguish pornography by their response, since they are disturbed by almost any erotic stimulation to a greater or lesser degree.

Fortunately for the mental health of the world, [174] the majority of us escape without such serious repression of our sexual curiosity and drives. We find out about sex from friends, eventually from parents, even schools and also from such books as "Housewife's Handbook." As a result the mature person can enjoy sexual relations with a spouse with whom he is intimately emotionally involved in many

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ways, and he can enjoy erotic stimulation from many sources such as novels, movies, jokes, and so forth without any morbid reaction or feeling of shame. Sex takes its rightful part as an important though not the sole contributor to the fullness of life.

But even this average well-adjusted person probably has some deep-seated guilt and shame about some aspects of sex as a result of his early education or lack of it. He is likely to be considerably unsettled by pornography, but he may also be somewhat uneasy about extremely realistic portrayals of sexual intercourse, discussions of homosexuality and so on. Here we can make the first important distinction in the definition of pornography. The anxiety caused by sexual realism will disappear as the person allows himself to become better acquainted with the subject. It is similar to anxiety about any wholly new experience. It may even be turned to a fuller enjoyment of life, as I think might happen to many as a result of reading Mrs. Anthony's book. The discomfort caused by pornography which is not primarily anxiety caused by a new experience [175] will not abate. About all one can develop for true pornography is a distaste.

Now I come to the general, the constitutional characteristic of the mind which is what is primarily attacked and irritated by pornography. Our understanding of the emotional development of man indicates that pornography, much like heroin can have unpleasant effects even in the imaginary perfectly adjusted man. This is because it appeals, like a narcotic to the remnant of infantile narcissism which is present in everyone. By narcissism I mean the selfish wish for total satisfaction without regard for people or responsibility which is characteristic of the new-born child. Always and inevitably the

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process of growing up emotionally is essentially one of relinquishing narcissism and learning, in the school of hard knocks, the sense of well-being one can get from taking responsibility and caring for another person. The average person is not ordinarily bothered by the remnant of infantile narcissism which will always be latent within him. And here we have the outstanding characteristic of pornography. It forcibly stimulates intense narcissistic fantasy by portraying orgiastic sexual and sadistic satisfaction in the most compelling and unreal way. Once begun it is very difficult to resist although it adds nothing to our understanding of ourselves, of others or to the capacity to enjoy sexuality. It is this [176] capacity to be aroused by such morbid fantasy which then provokes guilt, shame, and requires a painful effort to return to the world of reality which makes pornography not only valueless but distressing. Had we not all been infants at one time, no doubt pornography would have no appeal whatsoever, but since we were, we are all vulnerable to its seductive, morbid fantasies.

In summary, although I could list the important themes which are characteristic of pornography, the central test seems to be its capacity to evoke these latent narcissistic impulses which are present in everyone by the use of vivid, exaggerated violent sexual fantasies. The narcissistic impulses which it evokes cause a morbid sense of shame and a desire to regress to infancy to some extent even in the well-adjusted mature adult, whereas erotic realism only causes an erotic stimulation without regression for which the aforementioned individual would feel no shame or guilt.

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By Mr. Dickstein:

Q. Dr. Bennett, in your opinion, could "The Housewife's Handbook" have the requisite or a similar reading of "The Housewife's Handbook" by an average individual have the effect that you describe by the reading of pornographic material? A. No, it—

Mr. Creamer: Objected to, Your Honor, on the [177] basis that the question is hypothecated on the average person, and I do not believe the foundation has been laid for the doctor to testify to the average person. And, also, I object to that portion of his statement which contained a few sentences about the average person on the same grounds.

The Court: I will overrule the objection, and permit the question.

Mr. Dickstein: Would you repeat the question? I will reformulate the question.

By Mr. Dickstein:

Q. Would the reading of "The Housewife's Handbook" by an average person have the effect upon his psyche that you attribute to pornographic material? A. It would not, and I want to make clear that by the average person I mean a mature person, a person who is not mentally ill.

Q. Are most people in our population not mentally ill?

A. That is correct.

Q. Have you read "Eros," Volume 1, Number 4? A. Yes, I have.

Q. Would a reading of this volume by the average person have the same effect as the reading of the pornographic material as you have described?

Mr. Creamer: Objection on the same basis, Your [178] Honor, the average standard.

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The Court: The objection is noted and overruled.

You may answer the question, Doctor.

By Mr. Dickstein:

Q. Your answer, Doctor? A. The reading of "Eros" would not have this effect at all. It would have a very different effect.

Q. Would you say that the predominant effect of "Eros" as a whole would be sexually stimulating on the average individual?

Mr. Creamer: Objected to, Your Honor. That is the ultimate fact in issue.

Mr. Dickstein: Sexually stimulating?

Mr. Creamer: It certainly is well intertwined with the ultimate fact in issue.

The Court: Overruled. Exception noted.

The Witness: Would a predominant effect be sexually stimulating?

By Mr. Dickstein:

Q. Yes. A. That is hard to equalitate. I believe that you have to take a list of the articles. The predominant effect of some of the articles is sexually stimulating, and others not.

Q. Can you make a value judgment as to the predominant effect [179] on an individual who starts on page 1 and reads consecutively to the end of the volume? A. There would be occasional sexual stimulation.

Q. Have you read Volume 1, Number 1, of "Liaison"? A. Yes, I have.

Q. Is there anything in Volume 1, Number 1, of "Liaison" which would sexually stimulate an average in-

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dividual at all without regard to the nature of the stimulation? A. I don't believe so.

Q. Is there anything in "Liaison" that would to the average individual create morbid or shameful or licentious thoughts with respect to that? A. No.

Q. Might it do so on a disturbed person? A. Certainly. Almost anything can create this sort of feeling in a disturbed person. That is the essence of the disturbance, that they are disturbed by something which would not disturb the average individual.

Q. Could you give us an example of the sexual stimuli upon which a disturbed person might possibly act—I don't mean "act," but might possibly function in a mental way? A. Some people are sexually stimulated, for instance, by women's underwear.

Q. You would consider this a sign of mental illness, would [179a] you not, Doctor? A. Yes.

Mr. Dickstein: No further questions.

Mr. Creamer: If Your Honor will bear with me just a moment?

[180] Q. Doctor, in your dissertation on pornography as a psychiatrist sees it, as you see it as a psychiatrist, is your definition pretty much a hard core pornographic definition? A. What do you mean by "a hard core"?

Q. Well, you have it in a letter that you wrote to Mr. Ginzburg. A. Right.

Q. You used the definition "hard core pornography by contemporary national standards." What do you mean? A. In the first place, that's in quotation marks. It is a quotation from Mr. Ginzburg's letter. It is a quotation, I believe, from a Supreme Court decision and that's why I used that phrase. I would not have thought of it myself but—

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Q. But you did in that letter go ahead and define what you thought it was? A. Yes.

Q. Although you didn't know what it was yourself; is that it? A. No.

Q. Well, did your letter go on to describe what— A. I said I would not have used that phrase myself. I didn't say I didn't know what it was.

[181] Q. Well, then, what is it? A. I assume that what it—what was meant by hard core pornography is what I described as pornography in my—all pornography, in other words, in my presentation just now.

Q. Is a factor of your understanding of hard core pornography what the intent of the person producing the material is? A. Is it my understanding that the—

Q. Is that a factor that plays any role or any significant role? A. In the definition of pornography?

Q. In your concept of hard core pornography. A. Not in my definition. No. Is that—

Q. Do you recall writing to Mr. Ginzburg that:

“Returning to the question of pornography specifically, it would seem to me that hard core pornography by contemporary national standards must be evaluated by two measures”—

Mr. Dickstein: I think this letter has been misquoted, your Honor.

The Witness: I have gotten—

Mr. Dickstein: If the witness is to be cross-examined with respect to it I would like the entire statement to be read by Mr. Creamer.

[182] Mr. Creamer: If your Honor please, I think we have had enough reading of statements. The witness has the letter.

Mr. Dickstein: He is referring —

The Court: Just one at a time, gentlemen.

Mr. Dickstein: Sorry.

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Mr. Creamer: If they would like to develop other portions of the letter I think we should take it at that time. I think I have a right to cross-examine him on what he wrote to Mr. Ginzburg.

The Court: You have; you may proceed.

* * *

By Mr. Creamer:

Q. "It must be evaluated by two measures. First there is the intent of the creator. This is not necessarily easy to determine, but if the intent is to [183] communicate ideas or feelings including sexual feelings I would not consider this pornography. If the object is material gain for the creator through an appeal to the sexual curiosity and appetite I would call this book pornography."

Did you write that to Mr. Ginzburg? A. That is correct.

Q. Do you believe that? A. Yes, I believe that. I think it deserves a little explanation in terms of what I have just said.

Q. But you did not testify to it in your direct examination. A. Right. May I explain why I did not feel that this was relevant to the question of the definition of pornography which I gave?

I was responding to the phrase "contemporary national standards," and I was thinking of pornography in terms of what I believe, and I am not an expert on this, were contemporary national standards of pornography, not the psychiatric definition of pornography, and I think that a great many people—this is my non-psychiatric opinion—feel that anything that stimulates sexual curiosity violently is pornography and that they write for the purpose of financial gain material which is defined as pornography by the American [184] society as a whole. This is not a psychiatric definition.

Dr. Peter G. Bennett—for Defendants—Redirect

Q. Do I understand you, Doctor, that your understanding of hard core pornography by contemporary standards embraces the dual concept of sexually stimulating material that is sold with the obvious intent for material gain and economic gain; is that your concept of that phrase? A. My understanding of contemporary national standards is that pornography does include sexually stimulating material sold for financial gain, yes.

Mr. Creamer: No further questions.

Redirect examination by Mr. Dickstein:

Q. Dr. Bennett, in the letter you wrote to Mr. Ginzburg, in the paragraph immediately following the paragraph that Mr. Creamer has been alluding to, did you then proceed to describe pornography in psychiatric terms? A. Yes, and I hope I have made it clear that I don't even agree with my own definition in terms of—I mean, I don't believe that the national standards are a correct definition. I believe it exists but I don't believe that it is psychiatrically sound.

Q. What is a matter of contemporary community standards in the acceptance of literature broadly is not a question within the expertise of psychiatrists, is it, Doctor?

[185] Mr. Creamer: I object, your Honor. I think it is more of a statement than a question.

The Court: Objection sustained.

By Mr. Dickstein:

Q. Are you qualified to testify as to what the American public is reading these days?

Mr. Creamer: Objected to, your Honor, as exceeding the scope of the cross-examination.

Dr. Peter G. Bennett—for Defendants—By the Court

The Court: Overruled.

A. I don't believe so.

By Mr. Dickstein:

Q. Are you a literary expert, Doctor? A. No.

Q. You are a psychiatrist, however? A. Yes.

Mr. Dickstein: No further questions.

Mr. Creamer: No questions, your Honor.

By the Court:

Q. I have some questions, Doctor.

Will you turn to page 207 of the "Housewife's Handbook" and read the first paragraph.

Mr. Shapiro: Did you say 207, your Honor?

The Court: 207.

A. Yes, I have read it.

[186] *By the Court:*

Q. And after reading that what is your reaction? A. My reaction is that the author is describing her initial sexual experiences with a doctor, Dr. Adler.

Q. And it includes in the first line—are you familiar with the definition of sodomy? A. The legal definition?

Q. Yes. A. No, I am not.

Q. "Whoever carnally knows in any manner any animal or bird or carnally knows any male or female person by the anus or by or with the mouth, whoever voluntarily submits to such carnal knowledge, is guilty of sodomy."

Now, that includes having carnal knowledge by mouth; is that right? A. Yes, right.

Dr. Peter G. Bennett—for Defendants—By the Court

Q. Of woman to man, or of man to woman? A. Yes.

Q. And do you think that would have any shameful effect on the reader? A. I do—no, I don't feel that this would cause a shameful reaction in the average reader.

Q. You do not? [187] A. No.

Q. In the average reader, you are talking about— A. Mature person.

Q. Mature person?

Now, if the person was not mature and was 14, 15, or 16, then what? A. That's a good question. I was speaking of maturity actually not in terms of age but in terms of emotional maturity which can be present at 14 and—

Q. Do you think the average person is mature at 14?

A. I think that they are not necessarily going to be disturbed by reading such things as this at 14 and they are not mature in many respects, of course.

Q. Do you think a boy or a girl near 21—would you read that also, then, as well as the next two paragraphs, the next three paragraphs. A. Do I think—

Q. Have you read those? A. Yes.

Q. Do you think that it would suggest to them ways of having sexual intercourse in order to have greater sexual satisfaction? A. Yes, I do.

[188] Q. So far as you are concerned that would be what? A. I feel that would be permissible.

Q. It would be permissible? A. Yes, sir.

Q. Now, then, talking about maturity again, is that mental maturity you are talking about? A. Yes.

Q. Or sexual maturity? A. I am talking about emotional maturity, mental.

Q. Emotional maturity? Would that be in the average person, you think it would be what, about 14 or 16 or 18?

A. Well, I will have to confine what I am saying to a specific area, namely, reading about sexuality, is what is at issue, and I think that the average 14-year-old would not be disturbed by reading this. If they were in a position

Dr. Peter G. Bennett—for Defendants—By the Court

where they were suddenly called upon to do some of the things described here at that age, they would not—they might very well be disturbed but this is not—

Q. Do you think if they read this they then would, with a person of the opposite sex, if that be suggested from this little book, try to do this in order to have greater sexual satisfaction? A. No, I don't believe they would at that age.

Q. You don't think they would? [189] A. No.

Q. When do you think they would start? A. Well, not until after they had been having sexual intercourse in the usual fashion for some time. I think that people only undertake new experiences one thing at a time. They may read about them but they don't necessarily go out and try the whole thing all at once.

Q. Now, this section on age 36, if you go back to page 202, up to the place that you are reading, concerns sexual experiences with one not his or her spouse; is that right?

A. I am sure that is right. I remember so seeing.

Q. No, I think you had better check. A. I had better read it?

Yes, that's correct.

Q. If you will read at the bottom of page 206, which seems to answer the question I have asked— A. Excuse me?

Q. "Half-seriously he asked now, 'Why didn't your husband have sex with you?'

'At first he said there are more important things than sex. At the last he said that is for procreation only.'

"Dr. Adler said, 'He's sick.'"

[190] Then go on with the paragraph I have asked you to read. That suggests a moral code, that it is all right to have sexual relations with one not your spouse, is that right, this whole section on Age 36 up to this point? A. I have to follow, but I will say that is what the author's opinion is, right.

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Q. Yes, that is what I am talking about. You are not suggesting this. A. Right.

Q. That is the author's opinion.

Now, do you think that would have any shameful effects on a reader? A. I don't think it would create any shameful effects. It might—

Q. Or suggest to the reader at whatever age that it is morally proper to have sexual relations with a person not his or her spouse? A. No, I think that the reader who is old enough to wade through this book—and by that I mean 12, 13, 14—would recognize that this is the author's opinion but not necessarily the moral code or the code of society.

Q. You have read this book and said that it in your opinion was not obscene, it is not pornographic, and the [191] effects of reading it as a whole or any part of it do not produce the things that you said; is that right? A. That's right, your Honor.

Q. You haven't changed your opinion because of the question I have asked you? A. No, your Honor.

The Court: Any other questions, gentlemen?

Mr. Dickstein: No questions, your Honor, no questions.

Mr. Creamer: No questions, your Honor.

* * *

[192] Mr. Dickstein: The defendants call Reverend George Von Hilsheimer.

GEORGE VON HILSHEIMER, III, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dickstein:

Q. Reverend Hilsheimer, when were you ordained? A. I was ordained in the Southern Baptist Church in Florida in 1949.

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Q. How old were you? A. I was fourteen at the time.

Q. Was this unusual in the Southern Baptist Church?

A. I would say it was unusual, but not uncommon. A number of my colleagues were also ordained in early or middle teens who belong to a Fundamentalist group which has a group of youthful and untrained ministers.

Q. When did you attend college? [193] A. In 1951 I entered the University of Miami and pursued a course leading to an A. B. with a major in political science and a minor in history and the Russian language and literature.

Q. Did you pursue any graduate course? A. Yes. Under the accelerated course my last year and additional year I studied at the Graduate School of Psychology and took a course of analysis and training therapy at the Granada Psychiatric Clinic under Dr. D. T. Moore.

Q. What did you do after you left the university? A. I matriculated at the University of Chicago as a theological student with specialization in religion and personality.

Q. What was the nature of the course material you studied at the University of Chicago, or studied within the scope of that curriculum? A. At the University of Chicago one takes a core curriculum of theology, church history, the Bible, and so forth, and specializes in a more or less secular field. I chose this course and specialized in the field of psychology, and took my graduate work at the Graduate School of Psychology at the University of Chicago. At the same time I did clinical work as a recorder and therapist at the Child Guidance Center in the Lincoln Center, and as a minister of education of the All Souls Church, also in the Lincoln Center.

Q. During the time you were engaged in this curriculum did [194] you also study at the Washington University in St. Louis? A. Yes. We have a program there of practical training or vicarage, as it is more commonly known, in which you take a year's course as an assistant minister in

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a pulpit, which I did in St. Louis, Missouri, completing my academic work at the Washington University in St. Louis, and I completed my work toward the D. D. there.

Q. When did you receive your divinity degree? A. In 1957.

Q. From what institution? A. The University of Chicago.

Q. What did you do thereafter? A. I spent two years in military intelligence serving Western Europe. During that period I was granted two administrative leaves of absence in order to make a research and study of one of the histories of the free religious societies (Germany) on which I had written my D. D. thesis, and, second, in order to make an extensive survey of lay brotherhoods of service oriented in Europe.

After returning from military service I entered the employ of the American Humanist Association as a minister and group counselor where my work was to travel essentially in the eastern United States setting up demonstrations of group therapy and group dynamics; establishing programs of education, [195] particularly family education and family counseling, and lecturing at universities. During the course of two years I lectured at about seventy-five to one hundred universities and theological schools while traveling in that capacity.

Q. On what subject matters did you lecture? A. I lectured on comparative religion and theology, contemporary morals and, of course, education and therapy. At the end of my period of association I was settled in New York City as the resident minister and group counselor for the Greater New York Humanist Council, and at the same time served as family counselor for the Association for Counseling and Therapy in New York City.

Q. What is the Association for Counseling and Therapy? A. It is a private psychiatric clinic under the direction of a psychiatrist, a medical doctor, in which a team

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technique of a psychiatrist, psychiatric social worker, and psychologist and pastoral counselor or minister is used in both group technique and individual counseling with private patients.

Q. What did you do thereafter? A. This was in August of 1961. I accepted a call to the pulpit of the St. Lutheran Church in Fort Pierce, Florida. I was minister there for a little over a year. While I was there I worked with the Indian Rivermen Health Clinic as a relief, since we had one psychologist for eight counties and [196] a tremendous case load, and during that period along with my ministry I not only carried a case load of about twenty clients per week, a total of about a hundred during the week there, but also developed the Lincoln Park Child Care Center which is a care center giving training and education and care to the children of migrant farmers and other persons of low income status.

Q. Did you also provide pastoral counseling to members of your flock? A. Yes, surely.

Q. When did you leave Fort Pierce? A. In October of 1962 I came to New York City to be the minister in residence of Humanitas, which is a lay brotherhood of service.

I am also the minister of a small Baptist mission on the lower East Side in New York.

Q. Reverend, you are a consultant of President Kennedy's Study Group on National Voluntary Services; is that right? A. I am. That is the so-called Domestic Peace Corps.

Q. What other organizations are you associated with? A. I am a member of the board of directors of Mobilization for Youth, which is the first project established by the President's Committee.

I am a member of the board of directors of the Summer-ville Society, which is a national educational society. [197] I am also the executive director of the Fund for the Migrant

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Children, which maintains child-care programs and investigatory programs concerning the life of the migrant farmer and related people.

Q. Have any of your works been published? A. I have been published in the Journal of Nursery Education; in the Journal of School of Living; in the Humanitas, as well as having written book reviews in the Humanitas and primarily in the St. Louis Post Dispatch.

Q. In your capacity with Humanitas were you called upon to train social workers? A. Well, Humanitas is a—first of all, it is a lay brotherhood of service which one belongs to by contributing at least one percent of your income and one hundred hours of voluntary service per year. The service projects are organized on an autonomous basis. As the minister in residence, I am also an executive director and training officer. We find it necessary to train people in the particular technique in language since the group that we are interested in dealing with is the lowest economic group and presents problems that the average middle-class social worker has not been trained for. So, as a result, a good percentage of my time is spent in the training of social workers.

Q. Do you also do personal consulting to individuals within [198] this society? A. Yes. I work as the pastor and spiritual counselor for most of the young people and the families in our various programs in New York City. There are, of course, programs outside of New York City, but I am the spiritual counselor for a large number of families on the lower East Side.

Q. Reverend von Hilsheimer, is the Christian Church and Christian teaching often blamed for creating sexually regressive attitudes in our Western societies? A. That is a common attitude—

Mr. Creamer: Objection.

The Court: Just a minute.

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Mr. Creamer: I object on the ground it is irrelevant and immaterial.

Mr. Dickstein: I expect to develop the connection of relevancy. It may not be apparent at the moment, but I assure you it will be, if I am permitted to continue into the inquiry. It is merely prefatory, introductory.

The Court: You may move to strike.

Mr. Creamer: Thank you.

The Court: Will you answer the question, Reverend?

Don't talk quite as fast. It is a little difficult. Now, the question may be asked again and you may answer, [199] or we will have the court stenographer ask the question.

(The following question was read by the reporter:

"Q. Reverend von Hilsheimer, is the Christian Church and Christian teaching often blamed for creating sexually regressive attitudes in our Western societies?")

The Witness: It is often so blamed: yes.

By Mr. Dickstein:

Q. To what extent is this widely-held view attributable—

Mr. Creamer: Objection. It hasn't been established this is a widely-held view at all. I think the testimony should come from the witness.

The Court: Objection sustained.

[200] Q. To what extent is this point of view true? A. I would say that essentially it is false, both historically and certainly presently in the mainstream attitude of the Christian church.

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It is, of course, very difficult to talk about the Christian religion. I represent a rather fundamentalist, an individualistic strain of the Reformation. The Roman Catholic church represents another body. Yet we do share a core dogma, a core attitude, and certainly a core morality.

Throughout history there has been a balance between two points of view in the Christian church. One historically has been the one of utter celibacy, the Marcionites, and others. Usually the sects die out after a short time because they produce no children and have few converts.

On the other hand, it has been the view of perfectionists and others who contend that since Christ's sacrifice was perfect, Christians cannot sin and therefore may freely love one another in a carnal fashion.

The church has always existed in its main stream between these two points of view. The point of view represented in America today seems to me to be the culmination [201] of the trend begun with the Reformation.

You may recall that Luther and Zwingli and Calvin all contradicted the point of view of the Roman Catholic Church that the clergy should not marry. This is a first step toward the recognition of sexual needs of individual human beings and was regarded at the time as revolutionary and, of course, Luther's enemies described him as a sex devil and in various other ways this is how the sexual revolutionaries have been described.

In our own time the Christian church in America has gone through a rather curious evolution. First of all, in America the church early became almost irrelevant. Total membership—

Mr. Creamer: Your Honor, I hate to interrupt the witness, but he is talking in terms of the Christian church without defining what he is speaking about. It certainly is not responsive to the question

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that was asked and I am going to ask to move to strike his testimony.

The Court: It may be stricken out as not responsive.

Mr. Creamer: And repeat the question.

Mr. Dickstein: Your Honor, the question I originally asked was to what extent is this point of view, that is, the point of view of the Christian doctrines lead [202] to sexual repressions true?

The Court: He hasn't been asked to give the history of the entire matter. He hasn't been asked to give his views. He may answer the question you asked.

Mr. Dickstein: I think he did at the beginning. Perhaps—

Mr. Creamer: My recollection is he said it wasn't true.

The Court: We will let the record stand as is and ask the next question.

By Mr. Dickstein:

Q. What has been the main line of Christian thinking with regard to sex? A. I think the acceptance—

Mr. Creamer: Objection, Your Honor. I think there should be some qualification as to what he is talking about as far as Christian religion is concerned. I think that it is too broad a question and too general a term.

Mr. Dickstein: I will withdraw the question and attempt to establish a foundation.

By Mr. Dickstein:

Q. Are you familiar with comparative religions, comparative Christian religions particularly? A. Yes, I am.

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[203] Q. You have studied on this subject matter? A. Yes, I have.

Q. You have lectured on the subject matter? A. I have.

Q. Are you specifically acquainted with the sexual attitude evidenced by various Christian groups? A. I am.

Q. Are you specifically acquainted with the attitude, the attitude toward sex, evidenced by various Christian groups for any significant period of time? A. I am.

Q. Commencing with the period of the Reformation, would you please tell us what has been the attitude of Christian groups toward sex, generalizing if possible and showing the exceptions where one cannot generalize. A. The mainstream conviction of Christianity—and I might here say that Christians are those people that believe that Christ is risen, the Son of God and salvation comes through the acceptance of His sacrifice for remission of sins which seems to me a rather simple kind of definition and a clear-enough definition that this is what I am talking about when I speak about a Christian—a Christian point of view is that the human body is the gift of God and that the expression of the human body in legitimate forms is one of [204] the fullest gifts of God, and that the human body should be regarded without shame, without prurience, without undue focusing of attention, but that it should be along with eating and work and play among the great enjoyments which God has given to us in order to enjoy our stay on this earth.

The point of view of many sects has differed considerably. Even at the beginning of the Reformation Calvin was quite repressive in his sexual views. On the other hand, Luther was quite tolerant of sexual behavior. As a matter of fact, there was one of the Renaissance painters right under his window that painted his nudes and representations of the human flesh without any comment from Luther. He would have been burned in Calvin's Geneva.

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Between these two poles we Christians have made our way very torturously with a great deal of fire and thunder from the pulpit on both sides.

In America we have for a number of years been in a situation through our history where the church represented an almost irrelevant minority of Americans. At the end of the Revolution, I believe that less than 7 per cent of Americans were members of the church actively. The clergy as a result were drawn from a very narrow span of American life and religion was increasing unrelated to the life of the people. Now this has changed in this century.

[205] Q. When would you say this change began? A. I would say at least at the end of the second—of the first World War, if not after the end of the Spanish-American War, but around the turn of the century.

Q. And what were the circumstances which induced this change? A. First of all, the upheavals of the industrial revolution and great social change toward urbanization of Americans made our old means of solving human problems almost irrelevant, and the church again began to take on a role of having an open door, of being a possible alternative to large numbers of Americans. From that time the great increase in church membership began until it peaked out or it is claimed that it has peaked out in the late 50's, but there has been a progressive recognition on the one hand by the church that it must relate itself to the lives and needs of people and on the other hand by the people themselves that the church does in fact speak to the detail of their daily lives.

Q. What were the teachings of the Southern Baptist Church at the time you were first ordained? A. When I was a boy we were taught that dancing is sinful and that to kiss a girl is sinful whether you are engaged [206] to her or not, that rather innocent forms of sexual expression are sinful. For instance, at Bob Jones University an uncle

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of mine was forbidden to walk across the campus holding his wife's hand. These were rather common attitudes among the Fundamentalists groups in America a short time ago as 15 to 20 years.

Q. To what extent were these attitudes held by other Protestant denominations at that time? A. I think that my own denomination represented something of a backwash. For instance, when Baylor University and Wake Forest went through a great cataclysmic debate, the student body against the administration, as to whether dancing should be permitted, most Christians in America regarded this as something out of the past. However, it was not very far out of the past because most of our parents and grandparents held this point of view, and it was taught as a religiously valid point of view that dancing, later going to movies, and certainly going to plays, holding of hands, kissing a girl, or these sorts of enjoyment which we regard today as sort of innocent pleasures were all basely immoral and endangering the safety of the soul as well as tending to other kinds of immoral behavior.

Q. Is there any particular point of time at which you can identify the beginning of a substantial increase in pastoral [207] counseling activities as an important function of the ministry. A. In 1941 a book called "The Christian Interpretation of Sex" was written by Charles Piper. At this time this book with its frank appraisal of sex and its Christian interpretation in terms of the fact that sexuality is one of the more beautiful gifts of God was regarded as being very advanced and avant garde. Through the war, of course, there was not a great deal of movement, but a great deal of discussion among those men who were in the chaplaincy and in the Armed Forces. At the end of the war certainly the great majority of chairs in the pastoral theology and pastoral counseling were established in the theological schools of America and the growing concern of the church particularly for problems of family and

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marriage and marriage and pre-marital counseling began to take shape. During the late 40's these were regarded as brash and sometimes unfounded innovations. Today they are regarded as an essential part of theological education. One would not be granted a degree today in 90 per cent of the theological schools in America without having had a course in pastoral psychology which dealt directly and frankly with the sexual problems of individuals.

I think that partially again we had a large [208] group of men come into the ministry at the end of the war who would not otherwise have come into the ministry, men who had confronted a new social order and new social problems and had been brought very crisply up against questions of moral propriety. These were men also who would not except for the G. I. Bill have been educated ministers. This is particularly true of the Southern Baptists and other Fundamentalist denominations which represent, I might add in the largest numbers the greatest body of Protestants in America. These men brought a new awareness to the church of the needs of people and—

Q. And how did that awareness act upon the church's or the organized church's attitudes and teachings with respect to sex? A. Sex had not been mentioned in the church for at least 50 years in America except in the phrases such as "The Virgin Mary" and so forth describing in a very limited way some of the sexual doctrine of the church. The kind of pastoral guidance that was given was of a very abstract and so-called spiritualized nature. It did not deal specifically with the problems which human beings face.

By the influx of a whole new body of members and a whole new body of the clergy, the church began to realize that the institutions which in the past had solved [209] family problems were not solving them. First of all, the family is not what it was 40 years ago. It is not even what it was when I was a boy which is not very long ago. It does not have the strength. It simply does not have the size. It

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doesn't have the same relationship between the generations so that problems which in the past could have been solved by the family itself were now seen as the legitimate prerogative of the church to enter in and to talk about.

Now, we learned when we were dealing directly with people in this way that you cannot generalize when speaking to people but that when a child comes to you and asks you about certain passages in the Bible you must be able to describe exactly what the Bible means, exactly what the moral issue is at stake, and you cannot do this abstractedly if it is to have benefit for mother or her child. If a mother comes to you with the direct questions as mothers had not in the past because (1) they were afraid to speak to a minister in this way and (2) they were simply too modest to speak of such things on the whole and (3) the family had solved these problems more effectively certainly than it did after the Second World War—

If a mother comes to you with specific questions about, "What do I tell my daughter, what do I tell [210] my son, what kind of relationship do I have with my husband", you must be able to answer these clearly, explicitly, in terms these people understand, and the church has come not only to tolerate an openness about sexuality but to take an aggressive stance, where almost every church in America now has courses in sexual education and it is regarded as the normal and proper and necessary thing for churches to do, to give instructions not only in morality but in the technique and discipline and art and relationship of love and marriage and the relationship between two human beings of the opposite sex.

Q. What is the predominant Protestant attitude, and I am speaking of a clerical attitude, at this particular point of time toward the enjoyment of sex between man and wife? A. The typical Protestant attitude is represented particularly in those churches which are in the National

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Council of Churches which contains a great majority of Protestants, has been summed up a number of times by them, and it is essentially this, that between married couples nothing which does not violate the integrity and wishes and the physical autonomy of another partner is immoral, that two human beings may enjoy one another and should and must, and that the function of the church is to guarantee this enjoyment as one of the important bedrocks of marriage, not the most important [211] or the only one, but as one of the most important foundations on which marriage rests, that the enjoyment of sexuality is one of the great gifts of God, and that to teach shame, to teach a prurient inability directly to face the issues of sexuality, is not only wrong but is basically immoral and heretical.

Q. Heretical, you say? A. Heretical.

Q. Do you know the teaching of the Roman Catholic Church on this subject in this particular point of time?

A. It is always difficult for an outsider to speak too clearly about the Roman Church (1) because the Roman Catholic is not the monolithic organization that most outsiders think, and also because it has a great complexity and it has its own discipline, but I think that I can say in terms of—

Mr. Creamer: Objection, your Honor. I think he has already indicated that he cannot render any kind of an intelligent discussion of what the Roman Church stands for by his own preamble at this time. Therefore, I don't think he should be permitted to guess or conjecture as to what the position of the Catholic Church is.

The Court: Do you have anything to say, sir?

Mr. Dickstein: Your Honor, I did not—

[212] The Court: Go ahead, I am speaking to you.

Mr. Dickstein: I did not understand the Reverend Von Hilsheimer was about to guess and con-

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jecture. I think he was about to talk about the obvious manifestations of the Catholics' attitude toward sex which are apparent in their own publications, which are apparent through what the Roman Church is teaching and advocating at this particular point in time, material which is publicly available but available specifically to him and knowledgeable to him because of his Christian background and profession.

The Court: I didn't know it to be that way.

Mr. Creamer: I didn't understand it to be that way, either, your Honor. This is the first time I have heard it. If he has read any Catholic publications at all—

The Court: We will permit him to testify what he has gathered from what he has read.

Mr. Creamer: This is the first time it has come up, your Honor.

The Court: It would be a matter of opinion, his opinion of what he has read, but no more than that. If he limits his testimony to that I would think that I will not sustain the objection, but I will limit him to what he has [213] read, his opinion of what he has read from books, pamphlets, or if he has talked with someone.

Mr. Dickstein: I will put a foundation question on the record, your Honor.

By Mr. Dickstein:

Q. What are the sources that you have, sources of information that you have employed, in arriving at any opinion or understanding of the Roman Catholics' present attitude toward sexual enjoyment? A. First of all, as a direct experience with Catholic social workers and Catholic priests and Catholic agencies, I worked very closely on

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the President's Study Group with Father Duggan on The Bishop's Committee on Migratory Labor, I am very familiar with the Catholic technique, Catholic attitude and the Catholic point of view as represented in their social work and ministry to the migrants since we have a large number of cooperative enterprises there. I am familiar with such organizations as the Catholic Youth Organization and their subsidiary efforts in my work with slum children on the Lower East Side of New York and elsewhere. Here again I have detailed information and experience about the attitude of the representatives of the church and the techniques they use in relating to children and adults with sexual problems. I have also, of course, been a student of comparative [214] theology and I would base anything that I have to say on a Catholic moral position on "Jones' Compendium of Moral Theology" which is the exhaustive and leading authority in Catholic theology and moral—particularly moral theology.

Q. Based upon these various sources of information would you tell us what the prevalent Catholic viewpoint is at this particular time from an American Catholic viewpoint towards sex and sexuality? A. Again the Roman Church represents as its belief and its practice in social work that to invest children with a sense of shame around the area of sexuality is immoral and heretical, that the enjoyment of sex in marriage is moral and necessary and, indeed, there has even been an evolution in those social agencies advocating the teaching the rhythm method of birth control in that the families may be limited and yet sex may be enjoyed without the primary end of reproduction so long as unnatural means are not interposed in order to prevent a natural result.

The teachings in Catholic schools and the operations of Catholic social work agencies are frankly and directly as to approach the questions of sexuality, to speak in a language that the children understand which particularly

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[215] in the slums is the language of the streets, and to regard judgmental teaching about sex within the proper framework, a legitimate expression of sexuality in marriage is the necessary thing for a Catholic worker to do.

There is, of course, a different flavor in Catholic education and social work. They tend to have many more sexually segregated schools and programs. Yet even here every effort is made for them to approach material dealing with family life and the necessities of marriage gently, without shame and frankly, directly, using language that the people can understand.

Q. When did you first see "The Housewife's Handbook On Selective Promiscuity"? A. I saw it in 1960 when I was working as a counselor for the Association of Counseling in Therapy and with the Greater New York Humanist Council.

Q. How did you come to see a copy of it? A. One of my colleagues handed me a copy as a useful tool in therapy.

Q. Have you used the work in therapy in counseling work? A. I have used the work since it was first introduced to me and since I first read it insistently in my pastoral counseling and in my formal psychological counseling.

[216] Q. And how have you used the work? A. I have used it particularly in the cases of married women who almost inevitably are invested with a tremendous sense of shame and guiltiness about the sexual imagaries and values and experiences that they have had. I have used it as a means to ventilate and reduce this sense of shamefulness, this sense of debilitating guilt, and this sense of prurience which has been developed out of their training and experiences.

Q. Do you believe that the work tends to relieve this sense of shame on the average, on the people with whom you have used it? A. Yes, this is its most important value and this is the reason that I use it.

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Q. What do you think the teachings of the book are to the average person with whom you used the book? A. The book is a history, a very unhappy history, of a series of sexual and psychological misadventures and the encounter of a quite typical and average American woman with quite typical and average American men. The fact that the book itself is the history of a woman who has had sexual adventures outside the normally accepted bounds of marriage which, of course for most Americans today, is a sort of serial polygamy, it does not teach or advocate this, [217] but gives the women to whom I give the book at least a sense that their own experiences are not unusual, that their sexual failures are not unusual, and that they themselves should not be guilty because they are, what they say, sexual failures. I think it is necessary to see, No. 1, that the prevalent sexual experience of the average middle American woman in my experience and also in all the literature of pastoral psychology is one of frustration and failure and incompetence based upon a bedrock of guilt and ignorance.

Now, this guilt is not simply a sexual guilt. Most people have sexual fantasies, sexual desires, and have been taught sometimes that these desires in themselves are immoral. I think our current position in pastoral theology is that of psychotherapy and psychoanalysis that such fantasies, that such desires are not in and of themselves immoral and should be ventilated, that they should be brought out and talked about and thrown away, as it were.

Now, here is a book that comes along in language that these people can understand and says, "This is what happened to me, this terrible thing and this failing thing and this ignorant thing and this unfeeling, insensitive, incompetent man did this to me and did that to me, and I did this to him."

Now, whether or not the woman has an experience [218] of sexual misadventure, she does have an experience

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of sexual desire, an experience of sexual thought in fantasy, and she does have guilt both about her sexuality and almost always guilt about her failure to satisfy the man, to be competent as a human being. Then we cast this in the framework of the culture in which our people are raised and this is particularly true for the average middle American. Women particularly are taught that marriage is the key almost to everything. We have an almost idolatrous concept of marriage in our country. Little girls are told practically from the moment of birth that this is the one road to happiness and almost to salvation. They are told that somehow a mystical, magical experience is going to occur with this marriage that was made in heaven, which is a heretical theological notion in itself. They will meet the man of their dreams, he will be perfect for them, they will marry and things will be lovely and beautiful thereafter. They are told this by comic books, by television, by movies, by every possible medium of the public culture. They are told a lie. They are told a myth. They are told an idolatry in the theological sense because the facts are not these, and they are totally unprepared for the harsh, grim realities of a world where they have not been competent, given competencies, not only [219] competencies sexually but in every other area of the great needs that two human beings have when they form a life together.

Now, it is necessary for the pastoral counselor and for the psychologist if he is going to be responsible to his youth and to his parents to give them a more realistic view of the world in which they live and the problems that they are going to face and to fit them with the practical, detailed, immediate, realistic and unshamefully communicated knowledge about the things which are most important to them. This to me is the great value of this book. It says, "You are not alone. This is the experience of many, many people", and it gives a certain amount of hopefulness to it.

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It is in my mind theologically quite an innocent book. There is no sense of shame involved in it. There is no sense of prurience involved in it. There is no sense of wallowing in sexuality simply for its own sake but it is a simple, straightforward recount of a fairly unhappy history of a fairly typical woman, and I can say based on my clinical experience and the experience of my colleagues and the literature that this book is not drawn far from the average middle American experience whether involved with one or several partners.

[220] Q. Are you acquainted with the standard forms of marriage manuals? A. Yes, I am.

Q. To what extent do these books help you in the counseling activity? A. I find them totally unhelpful.

Q. Why do you say that, Reverend? A. First of all, these are couched in ambiguous language which gives no help or guidance at all.

Secondly, they deal with the physiognomy, the plumbing of sex. They take it on a high, rational plain. They sensitize it and put it in the laboratory and again create a certain kind of romantic and clinical illusion which is not true and therefore leads to a kind of disillusionment and cynicism once marriage is entered into. They speak in language, finally, that is inappropriate to the great majority of Americans. They speak in the language that is utterly foreign to the majority of people that I now work with, but they do speak in a language too complicated and abstract and technical for the average American. This is even many of the counseling handbooks such as "Love Without Fear" or "Christian Interpretation of Sex" or "A Marriage Manual," or others which are used generally and are rated as being designed for the average man and woman.

[221] Mr. Dickstein: No further questions. Thank you.

The Court: Cross-examination, please.

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Cross-examination by Mr. Creamer:

Q. Reverend, I think you indicated that—just one minute, please—up until the end of the First World War the Christian Church was an irrelevant minority in this country. Is that your statement? A. I said essentially in terms of membership it was.

Q. Then this country was not predominantly a Christian nation from the time of the Revolution to the time of the end of the First World War; is that your testimony? A. That is certainly true, yes. As a matter of fact, most ministers do not regard it as a fully Christian nation today.

Mr. Creamer: I move that that be stricken. I didn't ask that question.

The Court: I will consider it with the other testimony.

By Mr. Creamer:

Q. In part of your dissertation you indicated that your concept of the Christian churches is that they are tolerating openness in sex and taking an open stance on sex, and that you indicated that they were going into the techniques and the [222] discipline of sex and love. Do you regard the Christian Church today teaching discipline from what you have just been talking about? Do you teach any discipline yourself in your pastoral exercises? A. I am afraid I don't quite follow the question.

Q. You indicated that the Christian Church, as you saw it, had a tolerant openness towards sex. It was taking an open stance on sex, and then you gave a brief statement that the Christian churches were going into the techniques and disciplines of sex and love. Now I am asking you what you meant by "disciplines" there. A. Yes.

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Q. Is there any discipline? A. I think what I did say, that this church is not only tolerant but taking an aggressive point of view in seeing that it is one of its obligations to teach the techniques and disciplines and arts of love, and the relationship between the family and between the members of the families. In this sense discipline comes to mean the structured, Christian point of view about sexuality which is the legitimate, excellent situation which exists in the framework of a happy, non-prurient marriage which forecloses licentiousness, enjoys that which God has given it, and that is what I meant by "discipline."

Q. That is sexual discipline within the family? [223]

A. That is the Christian point of view, yes, the mainstream Christian point of view.

Q. How does that coincide with the various sexual episodes in this book where the large majority of them are extramarital in nature? How does one counsel people who presumably have a sexual problem by presenting to them a mass of extramarital engagements? A. In the same way that one teaches them moral decency and enjoyment by giving them the Bible to read. If you wish to take the Bible apart and take its various sections you can very much confuse the faithful. There are sections in it which appear to advocate this and the other thing. I do not use this handbook as a blueprint for what you are now supposed to do. I use it as a means to ventilate the sense of shame. I use it as a means to ventilate the sense of guilt essentially about fantasies about things which never happened and about the frustrations and failures which most American women and American men seem to have in their marital and sexual relationships. The main value of this book is quite irrelevant to its author's point of view and its author's theology which she does have and is implicit and positive in a free country to express. The main value is that in quite simple terms it discusses things which are

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not ordinarily discussed, and it particularly points out frustration after frustration. If anything, it teaches [224] that this kind of sexuality is not likely to be very enjoyable.

Q. In using your book with the people that evidently have problems do you supervise them or do you just hand them the book? What do you do? A. The book is given to them within the framework of my relationship with them. I generally indicate this is a book describing the life of a woman who seems to be fairly typical and usual with some comment, "If you think you have difficulties; if you think you have frustrations; if you think you have limitations; if you think you have guilts, then look at the book in this way and see what it has to teach you." It also has values in teaching specifically the terminology and the structure of the sex and sex relationships, but basically within that framework. I do not supervise, since I belong to a religious organization that believes people can read freely and have the ability to solve their own problems without my intimate and daily guidance.

Q. So, the fact that it has adultery throughout you don't comment upon, and that has no effect upon your parishoners? A. This is part of the material that we may discuss. It is part of the new facts which they having read can now discuss with ease with their minister, because it is something that he has given them to read.

Q. Is it important to discuss adultery with ease? [225] A. Yes, it is very important. I think it is one of the marks of an emotional maturity in a married couple with the person who intimately related with them as counselor and with each other discuss sexual matters with a great deal of ease and create to each other and to their children a sense of joy in proper sexuality.

Mr. Creamer: No further questions.

Mr. Dickstein: No further questions.

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By the Court:

Q. Reverend, you have read this book many times? A. Yes, I have.

Q. Would you think it is the kind of book that you would like to have in the library of your home if you have a fourteen-, or fifteen-, or sixteen-year-old son or daughter?

A. It is in the library of my home. My wife reads it. The teenage children in my parish read it because they know that they can freely discuss it and what it represents with me. It is part of my attempt with them to teach them that sex is not nasty. That one may read things which advocate a morality we do not agree with and not be perverted thereby.

Q. Some of the things in here relate to matters of sex perversion, do they not, or in your opinion they do not?

A. I think generally the kind of relationships the author describes are not commonly held by psychologists as perversions.

[226] Q. By psychologists? A. Yes. I would say most, even, pastors, counseling books suggest that exploration in sex is legitimate and valuable, and is not to be invested with a sense of immorality. There is certainly no direction, the teaching of the Church specifically, about this kind of relationship in a marriage as long as it is not exploited, as long as there is no shame on the part of one partner or another, but whether or not that is true, this is part of these children's lives, the material that is freely available to them is the hard-core pornography, shamefully discussing lewd, prurient kinds of garbage which is sold under the counter to these children, is frequently and freely available, and their whole understanding of sex is one of exploration of the girl on the one hand—and the girl has practically no knowledge of what is going on. This is particularly true in the lower classes, but even in the middle classes there is a frequent ignorance on the part of young

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girls about sexuality, and their only alternative, if we did not treat sex freely and frankly would be to go to the pornography or trash, or to books which they can not understand and are withheld from them in most cases. This kind of book in the setting of a person they trust and respect who has said, "Read it. We will discuss it," will form the relationship of a new kind of understanding. When a child comes to you and says, "Reverend, what is a virgin? I [227] don't understand the virgin birth," you begin to get an understanding that you must teach children and adults a whole kind of information. I, of course, work with a large number of people who simply do not know the source of pregnancy and their only sexual information is entirely pornographic. If I am to work effectively with them I must have means to read, of talk, or give them to read that with ease they can talk about things they do know about in a distorted way, and then we can talk about what is the kind of relationship you should have and I should have, and the proper kind of relationship.

Q. Do you think this book sets forth the proper kind of relationships? A. No, I don't think it advocates a relationship that any Christian minister or Christian church advocates.

Q. Do you think it is the kind of thing that someone should read and then be told that certain portions are not the kind of things religion says you should do? A. They can always read, and I have had them ask me to explain why God kills a man because he refuses to cohabit with his sister-in-law.

Q. How about the person who reads the book and doesn't have the reverend to go to talk to him about it and believes this is a code of morals that should be followed as set forth in this book? [228] A. This is one of the difficulties to me of pornography.

Q. I know it is a difficulty, but I want to pin you down and ask you whether or not a person who reads this book,

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of fourteen or sixteen or eighteen, and sees extracurricular sexual activities with a person before marriage, or after marriage, after marriage not with his own spouse, and the book would give a stamp of approval because as a result of those sexual activities they obtain sexual happiness? A. I don't think any person, particularly a teenager, is going to read this book and be convinced that adultery is a proper way of life. It is not a book of advocacy in that sense.

Q. Were you here this morning when I asked the doctor from the University of Pennsylvania with regard to a certain section? A. Yes, I was.

Q. I read to him the sexual experiences with a person other than the husband of the wife, and she gained great sexual satisfaction. A. Yes.

Q. From what had happened. A. Yes. This is part and parcel of their whole culture and upbringing, and everything that surrounds them.

Q. In other words— A. No, this book is in the framework of a whole history of [229] a very unhappy development, a whole history of frustrations.

Q. And then in order to become happy you break the moral code, break the penal laws to become happy sexually, and if somebody happens to see you you are arrested for sodomy and brought to the courts and perhaps convicted? A. Again, your Honor, I have to insist that these kids are always talking about such things.

Q. Not only the kids. A. Or adults.

Q. This happens to be prefaced, I believe, by the age of thirty-six. Here is a female at age thirty-six sexually unhappy. She is frustrated. She goes around with someone not her husband and he is unhappy, too. So, they gain sexual happiness by breaking a moral code. Don't you think it is taking a— A. It certainly even in the relationship with this Dr. So-And-So is not any real satisfaction of a lasting nature. She can not establish any kind of basic

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and permanent strength with him. He is not in the relationship of a protector for her or her children. She has a whole set of values which preclude her even asking for help.

Q. Isn't it a fact that she has no moral code at all? A. No. She has a moral code. It is not one with which we agree.

[230] Q. It is a non-moral code, then, isn't it? A. No. It is its own kind of moral code. She refuses, for instance, to ask this doctor for money which is part of her own moral code.

Q. I am talking about sex only, not money, or dollars, talking about she is unhappy with her husband. He is unhappy with his wife. So, in order to become happy sexually they have intercourse in whatever way it says in the book? A. She demonstrates she does not find happiness, or confidence, or security, or any other thing that our people want to have, and underwrites if these are valueless you are quite likely going to be in the kind of financial mess I am in, and the continual chaos my household is in. The main impact of that is this kind of person may indeed find a sexual happiness, but the sexual happiness is not total. She can not even have the person when she wants him every time, not even completely sexual happiness.

Q. She can't have him when she wants, so ultimately it is the natural thing that she will try to divorce her husband and eventually try to find a new one, wouldn't that follow? A. It doesn't there.

Q. I don't know whether it does, but isn't that the natural sequence of events? A. Certainly the common sequence of events.

[231] Q. And wouldn't it follow that the ultimate would be that, I want a divorce from my husband, or my wife, because I am unhappy sexually and I hope the next experience is going to bring more sexual happiness, and if it doesn't, I can go on another escapade with someone

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else? Isn't that a breakdown of all the morals of the church? A. I don't think this is the impact of the book. I don't think this is what the author represents. This sexual happiness she gets with two people, I believe, does not lead to further relationships. The first she can not even live in the same city. Most young people in reading this are very disturbed that there is a kind of intimacy and involvement here, but it doesn't lead to anything else and they see the falsity of putting this one value above all others.

Q. If you read this book, I haven't read it. It is one of the many things that have come before me. I read sections of it. If you read the book wouldn't it lead to the conclusion if you were a thinking youngster that you better not get married because you will never be happy sexually until you try, if you are a girl, all the men that you know, and if you are a boy, all the girls that you know? A. No, because this book is read, first of all, in the context of our popular culture, in the context of what kids and adults are saying to each other.

[232] Q. But how do you know that? A. Because these children and adults are raised in a certain kind of culture and this culture insists upon many kinds of values and indeed the great popular idols of our time are the movie queens and so forth who are representations that you can have financial plenty and respectability and so forth and so on without any regard for any kind of morality whatsoever, business, moral, ethical or whatever, to speak of. They are measuring things against this. This kind of book is a very helpful purgative taken against the movie-queen symbol of our society.

Q. When you hand this book out to a parishioner who has your counsel you hand it out with a stamp of approval that that is the course of conduct you approve? A. I hand it out in the context of who I am, my way of life, my means of profession, my message I deliver at least once a week,

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if not more often, and of the kind of values I try to exemplify in my life. The boys and girls with which I work, the adults with which I work, particularly, in a culture that uses a great deal of what is commonly known as obscenity in four-letter words. They know I do not get excited about this. I ignore it, and as a result, the kids do not have a need to continue saying it in my presence. They know because I accept this I do not go out and change the matters of my life. They [233] can see the way my wife and I live among them. They can also see that because my wife and I have no prurient shamefulness about sexuality that it is an area that is solid, can be the means of facing one corner of marriage and can be the means of exploring the many, many problems that they have. All our children in our society grow up in a world where there is a fantastic divorce rate and increasing rate of illegitimate birth and promiscuity among youngsters with no sexual enjoyment or otherwise. It is simply there. They don't know enough to enjoy it. They are so full of shame.

Q. You think they are full of shame or just sorry when something else happens? A. I think they are full of shame.

Q. In other words, they commit the sexual act and they are full of shame after they get home? A. They commit the sexual act in shame itself, shamefully.

Q. You mean mentally, thinking that when they commit the act— A. Surely.

Q. —or do they only think about it being shameful when, let us say, a fifteen-year-old girl and a sixteen-year-old boy in high school only think it is shameful when somebody calls their attention to it? A. No, I don't believe that. I think the sense of shame is [234] very general in our culture, and the very sense of shame drives people into immoral behavior.

Q. If it is shameful and then it would continue on once a week with the same girl, or twice a week, or four times a

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week, and that shameful conduct, it doesn't hit the conscience of the individual? A. Your Honor, we know married women who are quite adanced in their marriage—

Q. I am talking about children, not about married women. I am talking about the shamefulness of these children that come to see you. You say they feel a sense of shame when this happens. A. Yes, surely. Now, take for instance—

Q. And it continues on. They feel a sense of shame and still continue on, and on, and on until the girl becomes pregnant, and then what? A. Which is usually very quickly, unfortunately.

Q. I don't know. A. It is. Let me give you a specific example. In Fort Pierce, Florida, we developed the Child Care Center, dealing with people whose cultural level knew very little about sexuality, only that it was bad. In a population of 12,000 we had 1,200 illegitimate births, or 1,200 unwed mothers under the age of twenty-one. Most of the girls who had become unwed mothers [235] were from strongly Christian homes. This was very upsetting to my colleagues, and we wanted to find out why.

Q. It should be, not only upsetting to your colleagues, but upsetting to everybody. A. But if you feel your whole life's work is being perverted because of your own failure, we found, number one, these girls did not know what adultery or fornication meant. That was supposed to be sinful.

Number two, we found they had been trained that they could not say no to the demands of the man because of the value their subculture creates. No one ever worked among this group of people and explored generally. Now, we find it is possible to change this, but because of the intense prudery of this small group and because of the fact that the mothers were quite often away at religious exercises rather than dealing with their family we actually had the rather hilarious scene of ministers going around encouraging mothers not to go to church so frequently. These chil-

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dren must be given real information, information that they can understand if they are to avoid the pitfalls of the life that surrounds them. These children were so completely innocent—

Q. Of intent? A. —that they did not know what it was that was sinful.

Q. I don't understand you. [236] A. They did not know what copulation was. They did not know what fornication, adultery was in specific, clear-cut terms. This is an extremely impoverished segment of our culture, but it is not as small as it might seem. It is extensive throughout the United States, as much as one-fifth of our population.

Q. We have—and you know we have—young girls, young men in college, seniors in high school. Would you say they do not know what copulation was? A. This is a different type. Although it is frequent in my experience that boys and girls in high school, particularly the girls, do not really know what is involved. They know enough—

Q. Now, wait a minute. You mean they don't know what is involved in the way of responsibility? A. They do not know—for instance, quite frequently a young girl comes after one of the high school courses in effective living and family counseling and will say, "I understand how the sperm gets to the egg, and so forth and so on, but I don't know how it gets there in the first place." They don't know the actual action of sexuality. It is my feeling this should be taught in the family, not in classrooms, but the family are unprepared to teach it.

Q. Why should sexuality be taught to a twelve-year-old girl or boy who hopes to be married sometime when they are eighteen or nineteen? In other words, the pleasures of sex and how to [237] have sexual relations in order to get the most out of it? Why should not the facts be taught and not beyond that? A. I think these things should be the background against which they are brought up, not diagrams on the wall or recorded demon-

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strations, or things of this sort, but parents should freely and casually speak before the children and it is a traumatic experience in our culture. We don't know how to deal with it with our children. So, we have to take some special effort to teach them. Then in terms of particularly a large urban segment we have to tell our children certain things to protect themselves, because there are overly mature, only in a very narrow sense, boys and girls who will prey on the innocent. We have many cases of adolescents who come in in psychic shock because they have been exploited by their more enlightened and depraved cohorts. It is necessary for them to have a sense of awareness about what is going on so they may protect themselves and make some real moral choices.

Q. Talking about protection, are you talking about that the girl should carry a contraceptive in her pocketbook?

A. No. The kinds of things that are involved in sexuality show she can make her own present moral decision. If we ignore that we can't make a free choice. If we are well informed, we can.

Q. If she makes a moral choice at age of thirteen to have [238] sexual relations and knows all about it, it is all right? A. No. I am saying they didn't have the choice that might be made because it is necessary to prepare them, because in my counseling experience there are far too many girls at thirteen having their first child. If they had had more information they not only would have been able to have contraceptives, but not even engaged in the sexual relationship itself. They did so out of ignorance, and they did so because we moral leaders and authorities have failed in our job of communicating to them in terms they can understand, and it is our responsibility.

Q. So, you think the circulation of this book in all ages down to a certain age whatever, you didn't mention, it would be worthwhile among men and women, girls and

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boys? A. I think like all other books, your Honor, including the Bible, we use our good sense.

Q. I am only talking about this book, not the Bible or any other. A. I am saying this book is like all other books. I use my good sense about it. In the first place, it is not attracted to an eleven-year-old. I doubt if they would want to read it at all. In the second place, I try to place all of my work in a certain framework and direction.

Q. I am not talking about you. I am talking about someone else as the book is on the stands, the mails, or whatever it [239] is. Not what you do. A. Yes.

Q. Do you think that wide circulation of this book would be perfectly all right? A. I think it would serve as a ventilation from the kind of horrible trash that is freely available, the books which are on any newsstand which show sodomy, lesbianism, homosexuality, and adultery freely practiced.

Q. Isn't it in this book? A. But dealt with in an unshameful way, a dry way, a straight-forward way.

[240] Q. That's a question for me. In your opinion it is unshameful? A. In my opinion and in my experience of using this book widely among quite average American women and men, that this is the impact of this book, that it has a ventilating and health-giving effect, that it does not create a sense of deepness or overt sexual desire and certainly does not create the sense of shame, but to ventilate the shame realistically and tends to do away with some of the glitter that we have in our society associated with sex and all of its trappings. It is my feeling, your Honor—

Q. You think that this book was written by the author with a sense of shame? A. With a sense of shame?

Q. Yes. A. No, I don't.

Q. It was the experiences of the author or whatever it was? A. That's what it is represented as, yes.

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Q. And regardless of the experiences in here, you say part of it is to teach the reader that some of these things, as a result of doing them, they should have a sense of shame. That's what I don't understand. [241] A. No, I don't think that.

Q. That's why I don't understand your story. A. When I use the term "sense of shame," I am not talking about the theological guilt.

Q. You are not talking about a sin? A. I am not—when I talk about the sense of shame, I am talking about a pathological or a neurotic condition.

Q. You are talking about a sense of shame, of being remorseful? A. No, I am talking about it as a morbid fascination coupled with a morbid and unhealthy sense of guilt which is not related to the reality of the situation which is a wallowing in guiltiness, which is a form of sexual perversion in itself.

Now, this is what I mean when I talk about a sense of shame. Now, this book in its very dry and straightforward way does not sell sex in the way that almost everything that surrounds our people and our culture does, and I think it has to be seen in that context that freely available to them are the pulp magazines with the lurid covers and lurid insides, are the hard core pornography, the comic books and the one or two-page letters dealing directly with filth and perversion and violence and deep shamefulfulness and [242] disgust, and these are immediately and freely circulated throughout our society, and then, added on to that, the girly magazines, the moving picture shows and the rest of the expressions of mass culture, that we are a culture that packages and processes and sells sex in a perverted form, and that one of the real values of this book is that it cuts sex down to its size which is not really a glorious, ecstatic thing that is the end and goal of all lives, but it is simply one of the things that can be solid and enjoyed and can be one of the bases of a

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sound life and it casts itself in a proper perspective because of its very simplicity and its very recounting over and over again of these terrible frustrating and unenjoyable experiences and this terrible inability with sexual pleasure and sexual enjoyment to reach a full and solid and satisfying life, and this in contrast to the movie goddesses is a very wholesome and very moral and almost puritanical thing. I think it has to be seen in that context.

Q. You mean it has to be; if it isn't seen in that context, then what? A. Well, this is the way I see it and the way I use it: I work with children whose common expression is a four-letter perversion. This is their form of greeting and this is common and extending in our culture. I work with adults [243] whose common form of recreation is the telling of dirty and sometimes obscene and pornographic stories.

Now, these people may be rejected, out of hand, and say they are too guilty to regenerate or we may look and deal and say, "Here is where they are. This is the filth they have been taught about sex. Let us now try to do a cleansing job," and the cleansing job cannot simply be done with platitudes but must be done by getting in and walking and working in the world, not accepting it, but taking it as it is and living by your own standards and teaching your own message, and I think this is what we are trying to do, the people who use this kind of book and who recognize its real value and it does have a tremendous value in this kind of counseling.

Q. If you take the book as a whole, it approves of adultery, does it not? A. That's the author who approves of adultery. I think the impact of the book is to teach that the simple search for sexual satisfaction does not lead to other satisfactions.

Q. Doesn't lead to other satisfactions? A. It does not lead to a stable life at all. It does not lead to financial

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security. It does not lead to the kind of relationship that our people are looking for in marriage. That is, the sense of intimacy, the sense of [244] poetry, the sense of lyricism, the sense of strength and security that a marriage gives and is intensified by sex. We have only the intensification without anything to intensify, and this is clear to people who read this book as they go through it. It completely relieves their sense, though, of their fantasies, and this is very important, too, because their fantasies are couched against the kind of world in which they live and which you can walk down the streets in the town in which I live and within a block you could purchase three or four hundred different books that you would not permit in your house, and I don't permit in mine, but they are freely available to our children when they come into our sports center, when they come into our remedial reading centers, when they come into our various other kinds of programs. They have these in their hip pockets. They are talking about them. They are carried around, the women in the black lingerie, and they have drawn large sexual organs on them and have written some pornographic statements underneath and are talking about them in this way.

Now, we can go and shout and scream at them and tell them they are wrong, and all we do is alienate them. We can come and sit down and say, look, this thing [245] is valuable, this thing is natural, this thing is one of the best things in life, but it is only one part of life, and it is not really the glorious thing you think it is, but it is not dirty and vile and filthy, and it is certainly not the basis, certainly should not be the basis, of the kind of vicious exploitation that we have among our youngsters, and the very viciousness need not be a physical kind of violence but is a thing our little girls are taught where they are taught to be courtesans, to paint themselves attractively, and the newspapers are filled with columns which, if they were entitled appropriately, would say, "How to look like

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a successful prostitute.” This is exactly what they should be titled, and our whole intent is to exploit the male and, conversely, the boys are taught all their ways to impress and so on with girls, and the very sexual manuals, for instance, there is one, what to tell your child about sex by the Child Study Association, refuses to take a stand on the situations and is simply ambiguous: In some towns this is all right, and in some towns, that is all right, and talks generally about petting and necking that from one location to another have different meanings, and give no guidance at all, and yet right in the middle of the supposedly guides for morality is a whole guide on [246] how to be attractive, how to be popular and essentially how to be attractive and how to be popular is how to have sexual lure.

Now, this is what we teach our children, and I think we need to respond to this, not simply with moral judgment but with a realistic understanding of what the real value of sex is and with a complete ability to talk to these people in their own terms and to allow the free circulation of literature that talks about sex without shame and that describes many kinds of sexual experiences and their natural consequences. Out of that kind of freedom I am convinced that it is my experience with families that families will come to a moral choice that is much more superior than I can give them through preaching.

Q. You think that this book lends to the situation that a female should do whatever she thinks is necessary to give the male the greatest sexual happiness as a result of having relations with her and also at the same time that he should do the same for the female regardless of what method of sexual relations is used? A. I think it is generally accepted among both pastoral counselors and psychologists—I know this; I don’t think it—

Q. I am talking about you, what you think. A. Well, I am just putting this in a framework, that [247] between married couples, as long as it is done with delicacy, with

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concern for the feelings of one another, that there is nothing that should be condemned in terms of a sexual relationship so long as the integrity of one another is recognized.

Q. And in the form in this book, the sexual form as set forth in this book that you have read? A. They are—I don't think that there is—no, I am certain that there is not a sexual form in this book that is regarded as perverse by the general profession so long as—

Q. I am talking about you. A. As long as there is integrity.

Q. I am talking about you. A. No, so long as it was in the proper framework.

Q. And as set forth in this book? A. This is the natural and proper evolution of the relationship between two human beings. Now, as I said before, I think the evolution of this is an intimate and private thing and that we can prepare our families to give this kind of training by giving them a general sense of ventilation and ease about discussing sex and discussing sex and being open about talking about sex.

As I said, the church does not mean—as [248] the implication counsel seemed to think—that one is open and loose in one's morals, but simply that one talks as our ancestors did.

Now, we couldn't read Luther in most open meetings because his language was quite scatological.

Most of my grandparents who were all Baptist preachers have left memoirs and diaries which are full of very direct comments about the kind of counseling they gave in this regard when they were country preachers directly related to their people. They knew they could not talk in high-flown terms, so they talked very directly and very easily to their people.

Q. I ask you again, do you give your stamp of approval on the methods of sexual relationships set forth in this

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book, and the question can be answered yes or no. A. I couldn't phrase it that way, your Honor.

Q. Why can't you? A. I would have to say within the—in the way that I did—within married couples.

Q. Yes? A. All right.

Q. I am talking about between married couples, limited to married couples. [249] A. All right. So long as the integrity of one another is respected and so long as it is a natural and easy development of a loving couple, then I don't recall anything described in the book which I regard or which is generally regarded as perverse.

Q. I am talking about you, whether you— A. I said I regard or as is generally regarded as perverse.

Q. I am not speaking about the particular situation I read here this morning where the relationship was between a male and female. A. You are speaking about what is legally defined as sodomy?

Q. Unmarried. But if the relationship had been between husband and wife. A. Yes.

Q. Married. It would have received your stamp of approval as proper? A. I don't put stamps of approval on what people's private behavior—

Q. What words would you want to use? A. No, I would say again that the intimate relationships of a loving couple in marriage, so long as they have developed naturally and with regard for the integrity of one another, [250] that there is no such thing as perversion.

Q. Now, will you read what I read this morning, what I asked the doctor to read? Read the first four paragraphs on page 207, sir.

Now, then, I have asked you a question with regard to that. A. I repeat—

Q. The relationship that is there. A. I repeat, this was not described—so long as it is in the boundaries that I have stated—this does not describe a perversion and it describes a kind of sexual relationship which is generally regarded

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as quite permissible and proper so long as it is within the right framework.

Q. And you so regard it individually? A. That's right, but so long as it is within that kind of framework, nor do I think it is the kind of thing that can be directively done by counseling, something that a counselor can indicate is possible.

The Court: Any questions, gentlemen?

Do you have anything else you want to say, Reverend?

Mr. Dickstein: No further questions.

Mr. Creamer: I have one or two questions, your Honor.

[251] *Cross-examination by Mr. Creamer:*

Q. Do I understand you to say the author in expressing what happened to her, these various sexual episodes, did not enjoy what was going on? A. I would say the main impact of the book is that most of her experiences are unsatisfactory and unenjoyable and this is the main feeling that most people get out of it.

Q. Unenjoyable physically? A. Pardon?

Q. Unenjoyable physically? A. Yes, except for two individuals.

Q. I beg your pardon? A. Except for relationships with two individuals.

Q. Well, then, let me ask you this: From your reading of the book, from the description of the various acts of sexual intercourse and other sexual acts, was she physically enjoying them at the time? Were the partners physically enjoying them at the time from a fair reading of the book? A. She seemed to get physical enjoyment from two men in the book.

Q. She just seemed to? A. This is what she expressed.

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Q. And which two men were they? [252] A. It was the doctor and the—I don't recall the other name, but it was—

The Court: Do you want to have the book?

A. It was a younger man. I am not even sure—

By Mr. Creamer:

Q. I would like to have his name if you could recall it.
A. I will look it up for you.

Q. Thank you. A. I believe it is Bill Sanford in the book.

Q. Well, how about Bill Iverson? A. Pardon?

Q. Bill Iverson, directing your attention to page 167, the last paragraph on the top of page 168, to the three dots. Do you get the impression she enjoyed that with Bill Iverson? A. Yes, I do.

Q. And directing your attention to page 171, the last paragraph and the first paragraph on page 172, did she enjoy that episode with Bill Iverson?

The Court: With whom?

Mr. Creamer: Bill Iverson.

Mr. Dickstein: The same name.

A. Yes, she does.

By Mr. Creamer:

Q. And how about her sexual relations with her first [253] husband before she married him, did she indicate any satisfaction with them? A. I think you are perhaps misunderstanding. What I am saying is that I am talking about a totally satisfactory relationship. She obviously didn't with her first husband or she would not have left him.

Q. Well, these portrayals of sex, these sexual acts in here, are not portrayed as if they are unenjoyable in them—

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selves, are they? You are not suggesting that? A. I have not suggested that at all. I have said again and again that there is a great expression here of the techniques and means of reaching sexual satisfaction and that this is the main import and purpose of the author, it seems to me, is in her own philosophy. However, what I am talking about it, first of all, a deep and lasting even sexual satisfaction she does not seem to have developed and, more importantly, what I am talking about is the depth of a totally satisfying relationship with the man. This is not described.

Q. It isn't described with Dr. Adler? A. No, it isn't. In fact, I think it is the most important impact in reading this has on people. The average person who reads this is aware of the failure of this relationship to move beyond anything other than a purely and simply [254] sexual relationship, even though it is a friendly and nice and intimate relationship. It does not spread itself to form any kind of base for either of their lives. In fact, both of them have serious kinds of protections which they establish for themselves. The impact of this on the average person who reads it is to be aware that there are definite limitations and definite dangers to the moral philosophy espoused by the author and the impact while it is to quite simply and easily discuss these things is certainly not to sell, in a way that sex is sold all around us, the enjoyment of sex is the key to all other satisfactions.

I must insist again that this book must be seen within the framework of what our people and youngsters are taught daily, that sex itself is the key, that glamour itself is the key. They are seduced time and again and again by this philosophy, by almost every public expression of culture that surrounds them, that sex and glamour is the key.

Q. And the fact that she describes episode after episode of getting enjoyment out of it without responsibility

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you feel is of no moment to the significance of this book?
A. Certainly it is of no moment.

[255] Q. Because you read in something that isn't written, but something that you infer, that her relationships were not happy? A. It is implicitly written into the book. It is very clear what her philosophy is and what she wants out of a relationship with a man, and this is one of the values of the book. It is clear.

Q. I think it is clear, too. A. I think it is clear—

The Court: You may answer the question.

A. I say it is clear that she is not seeking anything more with another person and it is very clear also that she does not regard sex as the key to other kinds of pleasures, other kinds of satisfactions and other kinds of responsibilities, and it is quite implicitly clear in the book that when you do not take certain kinds of responsibilities in a sexual embrace, that you have severe limitations in your relationship with that person subsequently.

Now, the author thinks that this is good. The average person in our society does not think that this is good, is looking for a different kind of guidance and reads this exactly for what it is, an easy, straightforward account of sexual experiences, a recounting of the terrible [256] frustrations of a woman moving toward some kind of solution of her problems, and gets generally a ventilation of these feelings and explicitly learns the philosophy that I was saying—explicitly; I am not inferring. This is my experience from giving this book to numbers of people, that what they learned from it is that sexual satisfaction in and of itself may be quite good, in and of itself, but that that philosophy has severe restrictions, and that if you are going to get other kinds of enjoyment you must also take responsibility for the sexual embrace.

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Mr. Creamer: No further questions.

Mr. Dickstein: No questions.

Mr. Dickstein: The defense rests.

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[257] Mr. Creamer: In rebuttal, your Honor, the Government calls Dr. Frignito.

GOVERNMENT'S REBUTTAL EVIDENCE

DR. NICHOLAS GEORGE FRIGNITO, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Creamer:

Q. Dr. Frignito— A. I have permission to stand.

Q. Very good. A. Thank you.

Q. Dr. Frignito, what is your educational background?

A. I am a physician graduated from the Hahnemann Medical College and Hospital in 1938. Licensed to practice medicine in the State of Pennsylvania as of 1939, and I specialized in the field of neurology and psychiatry, certified by the Board, the American Board of Neurology and Psychology in 1945.

Q. And would you give us a little of your general background; since you graduated from medical school what you have been doing? A. Following my regular internship I was a resident and a fellow in psychiatry and neurology at the Philadelphia State [258] Hospital which qualified me to be a specialist in my field. Since that time I have been in the practice of psychiatry and neurology, and have been teaching at the Hahnemann Medical College, and presently

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hold the title of associate professor of neurology. I am the visiting chief psychiatrist at the Philadelphia General Hospital since 1946. I am a consultant in neurology to the Veterans' Administration Hospital, and I am a medical director and chief psychiatrist of the County Court of Philadelphia.

Q. How long have you been chief psychiatrist of the County Court of Philadelphia? A. Since 1955, but I have been with the court since 1947 as an examining psychiatrist and neurologist.

Q. And what have some of your duties been with regard to the County Court? A. I am fully responsible to the judiciary for the psychological, psychiatric and medical examinations of all juveniles who come to our attention at court. I am also responsible for the conduct of examinations for men and women who come to the attention of our court. The medical department of which I am director performs on the average each year approximately 6,000 psychiatric and psychological examinations, and approximately 8,000 physical examinations on all these individuals.

Q. Thank you, Doctor.

[259] Have you read "The Housewife's Handbook of Selective Promiscuity" by Rey Anthony?

Mr. Dickstein: Objection, your Honor. If the purpose of the doctor's testimony is to introduce substantive evidence tending to prove the obscenity of any of the works in question it had to be produced in the Government's case in chief. If it is to go into the issue of credibility of our witnesses, and that issue alone, we have no objection to its admissibility and this line of questioning would be appropriate only if limited to that purpose and that purpose alone.

Mr. Creamer: Your Honor, this will be a rebuttal witness. I just asked him if he read the

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book. I don't see anything that goes beyond rebuttal there.

The Court: No, but I assume your objection, sir, was to the whole general questions that you thought were to follow. I do not know what is to follow, and if that is to follow, we might as well rule on it now.

Mr. Dickstein: That's correct, your Honor, as we perceive what the Government is now trying to do. It waited until it saw what kind of a case we were going to put on before it even attempted to make any proof with regard to obscenity except for the works itself upon which it rested and the two postmasters from the cities in Pennsylvania.

Mr. Creamer: Your Honor, I think this is premature. [260] I think as my questioning develops it is the appropriate time to take it up. This is a rebuttal witness.

The Court: We will see what develops and give counsel an opportunity to object.

Don't answer the question if I tell you not to answer.

By Mr. Creamer:

Q. Have you read "The Housewife's Handbook," Doctor? A. No response.

The Court: I won't stop you unless you are told.

The Witness: Yes, sir, I have.

By Mr. Creamer:

Q. Do you think it has any medical value? A. No, I do not.

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Q. Why? A. I think it is essentially an obscene book and it is presented under the guise of medical—

Mr. Dickstein: Objection. He has not been qualified to speak to all of the factors which relate to the ultimate judgment of obscenity which only your Honor can make. He is speaking as a psychiatric expert, which he has been qualified for, with respect to those elements and the totality of obscenity which go to his specialty.

[261] Mr. Creamer: We have had a totality of witnesses for the defense who said it wasn't obscene, couldn't be obscene, and this doctor has reviewed the book and he is about to give his conceptions based on his knowledge and experience in psychiatry, and we are merely rebutting what the defense put up about this book.

Mr. Dickstein: Your Honor, I would say this: No witness of ours said that the book was or was not obscene. Our psychiatric witnesses testified as to the elements of pruriency, the effect of pruriency, the nature of pruriency upon the human psyche within normal limits, and on the pathological fringes. Our literary expert, Mr. Macdonald, testified as to whether the book goes substantially beyond the customary limits of candor that society now tolerates in other material. The Reverend von Hilsheimer testified as to the religious views on the subject of sex generally, and nobody has dared to take this issue away from your Honor as the Government appears to be suggesting that Dr. Frignito now do.

The Court: I reserve the right to determine whether it is that. That is my function here.

Mr. Creamer: If your Honor please, I move that we strike the testimony about it being obscene, and I just ask the doctor for his conclusions without

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getting into the question of obscenity. I move that be stricken.

[262] The Court: It may be stricken.

Mr. Dickstein: What is the question now before us?

The Court: I don't know.

Mr. Creamer: I would like the doctor's observations without getting into a question of whether or not in his opinion the book is obscene as to the medical value, or what he feels—whether it has any significant medical value to it.

The Witness: In my opinion it has no medical value.

By Mr. Creamer:

Q. Why? A. Because it gives a distorted viewpoint on sexual behavior of women, and the type of behavior that is called, say, prevalent in our community.

Q. Would it have any sanguine effect in psychiatry in any way? A. If I understand your question, you mean detrimental?

Q. Does it have any beneficial effect in psychiatry; is it of any value psychiatrically? A. No. In fact, I think it is a menace. It is a dangerous book. I think it is a very misleading book, and can lead to a lot of chaotic situations, because my interpretation of the [263] book, it fosters promiscuity. It fosters sexual perversity. It recommends, practically—I don't say "recommends," but implies that adultery is all right and fornication is all right, and all types of sexual perversions are all right. So, I interpret this book as being very vicious and very dangerous.

Q. Would this book have any value to you as a practicing psychiatrist in treating patients? A. I would never use a book like this, because I think a book like this would upset

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any person, whether that person is being treated by a psychiatrist or not being treated. I think it is very dangerous to the majority of people in the community. I don't think it would be a threat to, say, a professional person who has training and knowledge in this sort of business, but I think for the majority of our people and particularly the adolescent boy and girl it certainly is a very dangerous thing.

Mr. Dickstein: Objection to the portion of the testimony which goes to the effect of the book upon an adolescent child. That is not the federal test, Your Honor.

The Court: It is his opinion. Whether or not it is the test is entirely up to me.

Mr. Dickstein: All right.

By Mr. Creamer:

Q. Have you had experience with adolescents in your practice? A. Yes. We examine quite a number in our court, and over the [264] years I have examined many thousands of cases of boys and girls who come to our court. My experience has been with this type of book and of course similar books—

Mr. Dickstein: I object to the characterization of a book as "this type of book" unless the doctor indicates what other material he is referring to which has been read by adolescents under his care.

Mr. Creamer: He said books of a similar nature.

The Court: If he talks about this book—

Are you talking about this particular book, "The Housewife's Handbook of Sexual Promiscuity"?

The Witness: I would say I know of no adolescent that read this book, but I would say that the material contained in this book would be dangerous

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for an adolescent boy. In my experience in court, what this type of book results in causes delinquency.

Mr. Dickstein: Objection.

The Court: Overruled.

The Witness: It encourages all types of sex behavior, say, masturbation. It increases sexual promiscuity, and it has contributed to the increase in illegitimacy among our adolescent boys and girls so that now we are seeing girls thirteen and fourteen in our courts who have become pregnant because of illicit sexual relations, and it has—the incidence [265] of homosexuality has increased considerably, particularly in the last ten years. In fact, there has been an increase in sex offenses in the last ten years, 50 percent in some cases, and as high as 80 percent, as a result.

Mr. Dickstein: Your Honor, I would like to say at this point that we have—I would like it understood at this point that we have a continuing objection to any testimony which has now been offered or will be offered with respect to the effect of this material in terms of acting out. This is a question which the Supreme Court has put beyond the pale of obscenity inquiries. I would also like to state it is becoming increasingly apparent that the purpose of proving the testimony of this witness is to try to develop a case of obscenity which the Government failed to do before they closed their presentation.

Mr. Creamer: Your Honor, Dr. Bennett and the Reverend von Hilsheimer testified as to what could happen when this book got into the hands of a fourteen-year-old. We are merely rebutting the testimony that they gave on that point.

The Court: You may do that, but I think that the doctor went a little beyond that in the last two answers, and I do not think it would be proper.

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Mr. Creamer: I would move to strike them voluntarily.

[266] The Court: He is talking about statistics, and so forth, and it can not be a result of this book or any other. It is a result of any number of situations. If he describes that as a general situation which most of us know, anyway, but would not be in this record, it would be one thing, but I don't think he said as a result of reading this book we had an increase of this or that and several sexual offenses. I think it would be better if you ask the doctor the question and have him answer, give counsel an opportunity to object rather than have the doctor repeat—recite the wrong words.

By Mr. Creamer:

Q. From your education and experience, Doctor, what would be the effect of a fourteen-year-old boy reading the handbook?

Mr. Dickstein: Objection.

The Court: Overruled.

The Witness: To an average boy, I would say it would be very disturbing and certainly would possibly, and most likely, excite him to sexual misconduct.

By Mr. Creamer:

Q. What kind of sexual misconduct?

Mr. Dickstein: Do I have a continuing objection to this entire line? I don't want to interrupt.

The Court: No. This follows along the same thing, but if we change the subject I want the objection, if [267] you want to have an objection.

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Mr. Dickstein: I object.

The Court: Objection overruled.

You may answer, Doctor.

The Witness: Because of the sexual image it would produce in the boy it would lead to self-abuse, masturbation and that would lead to other types of sexual activity.

By Mr. Creamer:

Q. Doctor, from your experience and education, what do you believe the impact would be on an average person, an adult? A. I think again that it would stimulate the prurient interest and certainly also would mislead him into believing that this is acceptable behavior in our community.

Mr. Dickstein: Objection, Your Honor, unless he defines what he means by "prurient interest."

The Witness: That all types of perverted activities are normal as described in this book.

Mr. Dickstein: Has the doctor just described his definition of "prurient"?

The Witness: In other words, the stimulation by writing or pornographic books to sexual misconduct, or instilling lustful feelings.

Mr. Creamer: No further questions, Your Honor.

[268] *Cross-examination by Mr. Dickstein:*

Q. Doctor, did I hear you say that "The Housewife's Handbook" does describe a type of attitude which is prevalent in our society? A. No. It implies that this type of activity that this person indulged in is the type that most women desire and want, and that would be perfectly normal for women to do.

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Q. Doctor, when you read "The Housewife's Handbook"—incidentally, when did you read it? A. About two months ago or so.

Q. About two months ago? A. Yes.

Q. Do you happen to know anybody else who has read it other than those who are in the court here today? A. My secretary. A mature lady of sixty, I add.

Q. And that is the only person you know who has read the book? A. No. One of my psychologists, Dr. Orchinik.

Q. When you read the book did you get the impression that the authoress was a happy woman? A. No. The only impression I got was that she was a sick woman. I got the impression that she certainly was quite confused about her sex life and that she had, well, I guess she [269] was abnormal, poor moral standards.

Q. Is morality a concept of psychiatry or religion? A. I would think so. I certainly don't recommend people to be promiscuous or practice perversity.

Q. That wasn't my question. I asked you whether morality is a concept of psychiatry or religion. A. I think all human activity, no matter what it might be, comes under the aegis of a psychiatrist in advising patients what to do and what not to do.

Q. Do you consider you are an expert on morality? A. Oh, no. Of course not. I do not.

Q. By the way, when you read the book did you read it from cover to cover, Doctor? A. Yes, sir; I did.

Q. All of it? A. Yes, sir.

Q. Did you read the authoress's discussion on "Sex in Language and Action"? A. I read every word. I can't remember the details. I read every word of the book.

Q. Do you remember what she had to say about sex in language and action? A. I think, as I recall, she deplored the fact that so many of our young people don't know the proper names for sex organs [270] or sex activity, and encouraged the use of the vernacular.

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Q. Do you consider that wrong? A. Yes, I do. I don't think vulgarism is proper in our society.

Q. You would not encourage the use of the vernacular? A. Four-letter words, no, I don't.

Q. Are the adolescents whom you encounter normally in trouble with the law? A. Would you repeat that again?

Q. Are the adolescents whom you encounter normally in trouble with the law? A. I would say yes. The majority come to our attention because they have been in either school, in difficulty in either school or in the community or in the home.

Q. Do the majority of all adolescents come to the attention of your agency, Doctor? A. Only those that have difficulty in attending school, or obeying their parents, or in breaking the law.

Q. Does the average fourteen-year-old have such difficulty in doing these things that he is brought to the attention of your judicial agency? A. Doing what things?

Q. Breaking the law, and— A. Oh, yes. When they are involved in not going to school, [271] or stealing, or lying, or destroying property, or assaulting others, they are brought to our attention.

Q. Could you estimate for me how many fourteen-year-olds there are, male and female, within the City or County of Philadelphia? A. I couldn't give you exact figures, no. I will say that on the average in our court we process approximately 28,000 juveniles a year, the juvenile upper limit being eighteen.

Q. And what is the population of the jurisdiction in which your agency functions? A. The County of Philadelphia. That is 2,000,000 people.

Q. Doctor, have you ever tried to use "The Housewife's Handbook" in a clinical atmosphere? A. No, I wouldn't.

Q. No. I asked you whether you tried. A. Oh, no. I never did; no, sir.

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Q. Do you know whether the authoress's view toward sexual practice is widely held, or is held by other commentators on sex and sex in marriage? A. I don't know the exact number, but those men that I associate with rather closely do not hold to this type of sex behavior. I would say that the majority of psychiatrists that I am in contact with do not approve of, say, abnormal, aberrant sexual acts.

[272] Q. Have you ever heard of Van Develde? A. No, I didn't.

Q. V-a-n D-e-v-e-l-d-e. I am spelling it because I may have mispronounced it. A. No. I don't know who that is.

Q. You are unacquainted with Dr. Van Develde's works on marriage and sex? A. No, sir.

Q. Did you ever hear of "Love Without Fear" by Dr. Edward Chesser, Eustace Chesser? A. I heard about it. I didn't read the book.

Q. You have heard about it? A. Yes. I didn't read the book.

Q. Are you aware of the fact that Dr. Chesser in his work which was published by Signet Books in pocketbook form states:

We have seen how the tongue kiss can be employed to meet the tongue to caress the partner's mouth or body. It has often been used as a genital stimulation.

He then goes on to recommend this as one permissible form of sex play between two people. Are you aware of that view? A. Is that married people?

Q. The title of the book, Doctor, is "How to Achieve Sex [273] Happiness In Marriage." A. That means it refers to two persons indulging in that who are married to each other.

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Q. Yes. A. I would say it is permissible, yes.

Q. It is permissible? A. Between married people, yes.

Q. Between married people? A. Yes.

Q. In fact, don't most psychologists and psychiatrists and pastoral counselors agree this is permissible between married people? A. You mean tongue-kissing, you are talking about?

Q. Yes. A. Oh, yes. I don't object to it.

Q. I am talking about the genital kiss now, Doctor. A. I don't know what most think, but I would say that if this type of behavior does not replace the, say, the normal sex experience as the coitus with, say, or as organism, then, no, it would not be abnormal or aberrant between married men and women.

Q. And that is prevalent psychiatric opinion; is it not?

A. I would think so, yes.

Q. It is the prevalent opinion of marriage counselors?

[274] A. Married couples.

Q. Between married people. A. Yes.

Q. And I take it you do not approve of it between people who are not married simply because they are not married to each other? A. No. There is a little more than that. If this tongue stimulation of the genitals does not replace the sex act, in other words, does not lead to orgasm, it is not wrong. If it leads to orgasm in either partner, this is biologically wrong, or if you want to be moralistic, morally wrong as well.

Q. We have been talking about a practice, that is, the genital kiss known as what, Doctor, in medical terminology? A. Well, fellatio or cunnilingus.

Q. Do you consider these perversions between husband and wife? A. If it leads to orgasm in either partner, yes. If it is foreplay in sex, no.

Q. Do you recall testifying last year in a case entitled Commonwealth of Pennsylvania versus Herman Robbins? A. No. I do not recall it. What case is that?

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Q. Commonwealth of Pennsylvania versus Herman Robbins, the "Tropic of Cancer" case. A. Oh, yes, sir. Now, when you talk like that, yes, I do. I mean, names—yes, I do.

[275] Q. Do you recall identifying cunnilingus and fal-latio and all of these things as perversities without qualification as to the nature and relationships between the couple in question? A. I never said that. They are perversions of practice to the extent that, say, they were recommended in that book. As I say, foreplay in married couples not leading to sexual climax, it is not immoral. If it does, it is so. If it is practiced among unmarried people, it is wrong, immoral or illegal, if you want to put it that way, also.

Q. Do you recall testifying in that case:

Cunnilingus, the proximation of the mouth of one person on the female organ of another person,—

And then proceeding to identify cunnilingus as one of the well-known forms of sexual perversions? A. Yes. It is a perversion, no matter who practices it, but as I say, as part of the foreplay in married couples, if it does not lead to sexual gratification which is orgasm, it is all right to practice, but it is still a sexual perversity, regardless.

Q. Do you also regard the physical touching of the tactile sensation in love-play between a married couple as indecent? A. No, sir. I do not.

Q. Doctor, do you recall testifying in this case:

[276] This indecent touching of course includes the touching on private parts of the individual, both male and female, by the hand or perhaps of the mouth. A. Did I make that statement that you are reading.

Q. Yes. I am reading it, Doctor. Do you recall making that statement? That was my question. A. It is out of

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context. I would imagine that is referring to people who are unmarried or not married to each other. That would be indecent, yes. If it is a married couple, no.

Q. Doctor, if I show you a transcript of your testimony in that case do you think— A. I would be glad to see it. I never saw it.

Q. Do you think it might help you refresh your recollection of what you said on that occasion? A. You have got it there. I will be happy to read it.

Q. I asked you whether you think it would refresh your recollection as to what you said. A. You already refreshed my recollection. I am not denying.

Q. Is your recollection refreshed at this point? A. I know I testified in the court on this book, "Tropic of Cancer," as an obscene book, and gave my reason for it.

Q. Do you now also recall testifying:

"This indecent touching, of course, includes the touching on the private parts of the individual, [277] both male and female, by the hand or perhaps by the mouth"?

A. Yes. That was a definition I gave for that perversion.

[278] Q. Doctor, in that case you were also asked to express an opinion as to whether or not certain works were or were not obscene, were you not? A. Yes, sir.

Mr. Creamer: I object, your Honor. Now we carefully kept out of here the doctor's feeling as to the obscenity of the material. There is no reason to go into this collateral investigation.

The Court: Well, we will let it in.

Mr. Creamer: Pardon me, sir?

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Rebuttal—Cross*

By Mr. Dickstein:

Q. Do you recall that testimony? A. Yes, sir.

Q. Do you recall being asked whether you had ever read "Peyton Place"? A. Yes, that's right.

Q. And your answer was— A. I think no.

Q. You said no? A. I think. I remember seeing the movie. I believe that's what I saw, "Peyton Place."

Q. Doctor, I show you page 204 of the transcript in that case and call your attention to the testimony, and I ask you [279] to read it and tell me whether that refreshes your recollection as to what you said. A. Oh, yes, I guess I did. I remember seeing the movie, too, yes.

Q. Oh, you now recall that you did read the book? A. Yes. What is so horrible about that?

Q. When you read "Peyton Place," did you consider it obscene? A. Well, I wouldn't recommend it. I wouldn't say it was absolutely pornographic, but I considered it obscene, yes, not the movie as much as the book.

Q. Do you recall being asked whether you read any of the works of Mickey Spillane? A. Oh, that I didn't read. If I did it is a long time ago. I don't recall. I know I saw a lot of TV shows on that.

Q. I show you page 204 of the transcript in that case and ask whether that refreshes your recollection. A. It does.

Q. Did you read any Mickey Spillane? A. Yes, sir.

Q. How many copies of Mickey Spillane? A. Oh, I don't know, maybe one or two. That's the reason why I don't remember all the little details of these books.

Q. Did you consider them obscene? [280] A. A lot of Spillane's books are obscene.

Q. Pardon me? A. A lot of his books are obscene; not all of them.

Q. Are the books you read of Mickey Spillane's obscene? A. Well, I think so, yes.

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Q. Did you ever read "God's Little Acres," Doctor?

A. Yes, I think I did. You know, I saw movies on that, too. You know, I get confused, but I know I saw—

Q. I am asking you whether you recall reading the book, not the movie. A. I think partially, I think partially.

Q. I show you page 206 of the transcript in that case and ask if it refreshes your recollection as to whether or not you testified in that case that you had read "God's Little Acre"? A. Yes, it does.

Q. You have read "God's Little Acre"? A. Well, not completely. I read parts of it, yes, and I remember seeing the movie on it.

Q. Do you recall in the case which you testified expressing an opinion after stating that you had read it, you were asked, "Do you consider this book obscene?" A. Yes.

Q. Do you recall the question? [281] A. Yes.

Q. And your answer was— A. I think it was yes.

Q. Well, what is your answer now? A. I think it was.

Q. Have you read "Lady Chatterley's Lover," Doctor? A. In part, yes.

Q. Do you consider "Lady Chatterley's Lover" obscene? A. Not completely, no, I didn't. I don't think I did. Some of the passages—

Q. Do you recall your testimony in answer to this question in the case in which you testified in the Commonwealth of Pennsylvania v. Herman Robbin? A. Yes.

Q. What was your answer to that question in that case?

A. Well, it was obscene in parts. I think I said that. I said there were certain scenes and passages. I wouldn't put it down as hard core pornography.

Q. Doctor, I would like to read you some testimony and ask whether you recall these questions and these answers:

"Q. Have you read 'Lady Chatterley's Lover'?"

A. In part.

"Q. Do you consider that obscene? A. Yes, sir."

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[282] Do you recall those questions and answers being put to you? A. Yes.

Q. And do you recall those answers coming from you? A. Yes.

Q. Doctor, have you seen a nudist publication called "Sunshine and Health"? A. Yes, sir.

Q. Do you consider that obscene? A. A majority, yes.

Q. What do you mean by a majority? A. Most of their publications are obscene because they portray the completely nude body, men and women.

Q. Are you aware that the Supreme Court of the United States has held "Sunshine and Health" not to be obscene? A. Yes, yes, I am aware of that.

Q. Does this affect your opinion in any way? A. No, it doesn't.

Mr. Dickstein: No further questions.

Mr. Creamer: No questions, your Honor.

* * *

[285] Mr. Dickstein: Your Honor, I would now like to make a motion relating to the testimony of Dr. Firgnito.

The Court: Dr. who?

Mr. Dickstein: Firgnito, the Government's witness, the last gentleman that was heard yesterday.

The Court: Yes.

Mr. Dickstein: Mr. Creamer represented that the only purpose of Dr. Firgnito's testimony was to rebut matters raised in defense. In this connection Mr. Creamer stated that our witnesses had offered testimony on the potential effect of "The Handbook" on an adolescent.

I would like to make it perfectly clear at this time that no part of the direct testimony of our witnesses went to this proposition and the only testi-

Colloquy of Court and Counsel

mony on this subject came in response to questions asked by your Honor.

If the record is unclear I would like to make it perfectly clear that we object to all such testimony on the grounds of relevance and materiality under the tests stated by the Supreme Court.

At this point I would ordinarily make a motion to strike portions of Dr. Firgnito's testimony which went beyond matters raised in defense and went beyond the question of credibility of our defense witnesses. However, of course it is practically impossible to do so because such testimony is [286] intermixed. Instead, I would like your Honor to rule that no portion of that testimony shall have any affirmative probative value with respect to the elements of the obscenity counts since all such evidence would have had to be introduced during the Government's case. We have no objection to consideration of such testimony for the purpose of impeachment, the purpose stated by Mr. Creamer, but if Mr. Creamer wanted to put on a witness in an attempt to prove any of the essential elements of the offense it is an elemental principle of criminal procedural law that he would have had to do so in his own case and not merely by trying to denominate it as rebuttal testimony.

The Court: Mr. Creamer.

Mr. Creamer: Your Honor, I believe there is no disagreement here. I am not offering any of these rebuttal witness as affirmative evidence. I am offering them merely for rebuttal and I hope that your Honor will not consider any of them as affirmative evidence. That is, it is merely offered to rebut the other experts, so I have no objection at all to the statement that you merely consider it as re-

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buttal testimony and not affirmative evidence in itself.

Is that satisfactory?

Mr. Dickstein: That is satisfactory. Will that apply to all other witnesses in rebuttal?

[287] Mr. Creamer: It will apply to all other witnesses, your Honor.

Mr. Dickstein: Thank you.

Mr. Creamer: Merely rebuttal witnesses.

The Court: Not as affirmative evidence?

Mr. Creamer: That's right, sir.

The Court: All right. The record may so show. There is nothing else I can say if you agree on this proposition.

You will proceed now with the calling of what other witnesses you have.

Mr. Creamer: Thank you, your Honor.

Dr. Ford.

ANN HANKINS FORD, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Creamer:

Q. Doctor, would you state your full name, please? A. Ann Hankins Ford.

Q. Dr. Ford, I wonder if you would give us a resume of your educational background. A. I am a graduate of the School of Medicine, the University [288] of Pennsylvania.

Q. In what year? A. 1940.

The Court: 1940?

The Witness: Yes. '40.

The Court: 1940. Thank you.

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The Witness: I then had residencies in psychiatry after the usual internship at the Hospital for Mental and Nervous Diseases—

The Court: Will you keep your voice up a little bit? The acoustics in this room are bad and I can't hear you. I am very close. I don't know whether the gentlemen out there can hear you or not, but there is a fan going here and all that sort of thing. It is a little difficult. This is a large room. I would appreciate it. Thank you.

The Witness: Do you want me to repeat that?

The Court: Yes.

The Witness: I had a fellowship in psychiatry at the Pennsylvania Hospital for Mental and Nervous Diseases. I then had the first fellowship in psychiatry granted by the Rockefeller Foundation to a woman at the Institute of the Pennsylvania Hospital. I worked for a number of years as an associate of the late Dr. Edward Strecker, professor of psychiatry at the University of Pennsylvania. I am a diplomate of [289] the American Board of Neurology and Psychiatry which means that I am certified by the American Board. I worked—well, then I taught at the University of Pennsylvania and the Woman's Medical College in the departments of psychiatry. I was on the staff of the Philadelphia General Hospital, the Woman's College Hospital, the Woman's Hospital, the Pennsylvania Hospital for Mental and Nervous Diseases and the Institute of the Pennsylvania Hospital. I then became chief of psychiatry at the Woman's Hospital, Pennsylvania, and head of the Ann H. Ford Clinic in that hospital.

I am now retired head and consultant to that hospital in private practice doing psychoanalysis.

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By Mr. Creamer:

Q. How many years have you been actually engaged in the practice of psychiatry? A. Since 1941.

Q. Doctor, have you read "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony? A. Yes.

Q. In your opinion based on your education and experience does this book have any medical value in the field of psychiatry or psychology? A. No.

Q. Why? [290] A. In the field of psychiatry in which I am involved it would be a destructive book. The book itself is written by or about a very disturbed person, one who is emotionally very immature and who has not progressed emotionally from the age of childhood when people are in a normal homosexual stage.

This is not about a woman; it is about a homosexual woman. This woman in no way indicates in her book that there is anything except the wish to be a man, the wish to have a penis, and she goes through all of these diverse and exhausting means to procure this organ.

The Court: To procure—was was the last word?

The Witness: This organ.

The Court: This organ?

The Witness: This organ.

By Mr. Creamer:

Q. Could you give us a little more background on her psychiatric condition as it appears in the book, that is, with regard to her thoughts on the clitoris and other things as developed in the book, what that is in terms of her psychology make-up? A. In the embryonic development of the human fetus the fetus is bisexual, and as the sexual organs develop, the predominant one matures and the recessive organ shows remnants. The clitoris [291] is

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a remnant of the male penis from fetal development and this is so emphasized in this book, it is the only penis this woman has, and she all but works it to death. She must have this recognized. She must have great male attention paid to her substitute penis, and in this way she is not making love to these men. This is not a lovers' relationship; it is a matter of demeaning, sullyng these men whom she comes in contact with.

This doesn't occur to her because she doesn't evidently understand her own problem. Her homosexual activities are carried out in an acting out process whereby she satisfies her homosexual needs by snatching some other woman's penis, that is, some other woman's husband, and in this way she makes a vast collection of male organs at the expense of some other woman usually.

Q. Does this book have any medical message to it? A. Well, the only message I found in the book is if you are dissatisfied with your husband look around and get some other man.

Q. Doctor, based on your education and experience would this book have any value to you in the treatment and counseling of your patients? A. No, I think it would be more disturbing. Here is a woman who is so confused, and she is so far from understanding [292] what her problem is, that someone in a similar situation—and there are many of them—promiscuity is certainly not an act of love, but an act of hostility, and it would only reinforce the anguish and the feelings of hostility that my patient would have.

Mr. Creamer: Thank you, Doctor. No further questions.

The Court: Will you give me the last answer please?

(The answer was read).

The Court: Cross-examine, please.

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Cross-examination by Mr. Dickstein:

Q. Dr. Ford, are your patients normally people who are disturbed in one way or another? A. Yes.

The Court: Will you repeat that question? For some reason or another I don't hear well this morning.

Mr. Dickstein: Will you repeat it?
(The testimony was read).

[293] *By Mr. Dickstein:*

Q. You indicate, then, that the book might tend to fortify or intensify the anxieties or hostilities of your particular patients. That is your empirical experience, is that correct? A. It might tend to do that, yes.

Q. Doctor, from your ability to draw a psychiatric profile of the authoress of this book from merely reading the book, I take it you consider it to be a statement of a true case of pathology, disturbance, or whatever you might want to call it, is that correct? A. A true case of pathology? I am having trouble hearing, too.

Q. Let me start again. You have on the witness stand

The Court: May I interrupt you?

Please keep your voice up. I don't know, for some reason your voice seems to drop and I can't hear you. I don't know whether the witness can hear you.

By Mr. Dickstein:

Q. You have on the witness stand drawn a psychiatric profile as you see it of the authoress of the book from a reading of the book, have you not? A. Yes.

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Q. You believe your comments are valid, do you not?
A. Yes.

[294] Q. Does what you read in the book seem to be consistent with the particular forms of disturbance and the roots of disturbance that you have seen in other similar, real cases? A. Yes.

Q. Do you know of any other books which are autobiographical first-person accounts by women of their sexual activities and attitudes? A. Not offhand.

Mr. Creamer: Objection, your Honor. I don't think that that is relevant.

The Court: Objection overruled.

What did the witness say?

The Witness: Not offhand, I don't.

The Court: Not offhand.

By Mr. Dickstein:

Q. Do you think this book, in the sense of it being an autobiographical account by a woman of her sexual attitudes and activities, has some value, instructional value, to a psychologist or a psychiatrist? A. This particular book, no.

Q. Well, does it present a case history in a sense? A. When one reads the first chapter, it has been read. The rest is repetitious.

Q. You mean a trained psychiatrist can deduce everything [295] else that follows from what appears in the first chapter? Is that what they are saying? A. In a sense, yes.

Q. Are you saying that it is repetitious of other case histories which all psychiatrists are aware of? A. It has its uniqueness here and there.

The Court: Will you keep your voice up, please? I can't hear you.

A. It has its uniqueness here and there.

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By Mr. Dickstein:

Q. What are those points of uniqueness? A. Well, the dripping vagina, the blood running down the legs, the graphic, graphic descriptions of the second the penis is introduced into the body, the repetition of her whole body and being vibrating with the ecstasy of sensation.

Q. Was this a unique expression within your experience?

A. Yes.

Q. Did you learn something from reading about it?

A. No.

Q. Something in your framework as a psychiatrist?

A. Nothing particularly new, no.

Q. Did it add in any way to your knowledge of psychiatry or case histories or the particular manifestations of this type of generalized disturbance? [296] A. No.

Q. But it did have some unique expressions of manifestations of this type of disturbance, did it not? A. Well, I presume the way each face is unique. The eyes, nose and mouth of each face are similar, but they are unique.

Q. Doctor, you testified that the authoress's homosexuality was manifest in her continuously borrowing the penises of other women, that is, their husbands', with which to engage in sexual activity. Have I approximately stated what your testimony was? A. Yes.

Q. From your reading of the book can you state how many instances there are described in that book in which the authoress indicates that she had sexual relations with a married man after she reached her majority? A. No, I can't.

Q. Do you know of any specifically, Doctor? A. In the book?

Q. Can you point to any sexual activity described in the book by this authoress after she attained her majority?

A. Yes. There are several in the book.

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- Q. Could you point—do you have a copy of the book?
A. Oh, boy!
I have a copy.
It doesn't matter whether it is somebody's husband [297] or whether this woman is some man's mistress. This is a very pleasing experience for this woman, to take some other woman's man away from her.
Q. Well, would you say this book then teaches adultery?
A. Not necessarily.

Mr. Dickstein: No further questions.
Mr. Creamer: No questions, your Honor.
The Court: Thank you, Doctor.
(Witness excused).

ADOLPH EMIL KANNWISCHER, having been duly sworn,
was examined and testified as follows:

Direct examination by Mr. Creamer:

- Q. Reverend Kannwischer, I wonder if you would describe your educational experience, please. A. B. A., University of Rochester.
Q. What year, sir? A. 1937.
M. A., Columbia University, 1943.
S. T. M., Union Theological Seminary, New York City.

The Court: Just a moment. What is the degree?
[298] The Witness: S. T. M., Master of Sacred Theology.
Ph. D., New York University.

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By Mr. Creamer:

Q. Would you give us your religious background, that is, your theological training, and what sect you belong to.

A. I am a Baptist minister, ordained Baptist minister.

Q. Are you affiliated with any institutions or churches in particular? A. I am a member of a church. I am presently a professor of psychology and director of guidance at Eastern Baptist College.

Q. Were you ever affiliated with any other institutions?

A. Yes, sir.

Q. Would you state what they were. A. I was a federal prison chaplain for nine years.

Q. At what institution? A. Lewisburg, Pennsylvania; Tallahassee, Florida; Chillicothe, Ohio.

Q. Were you ever affiliated with any church in New York City, Reverend? A. Yes, sir, I was pastor of the Ridgewood Baptist Church, Ridgewood, Long Island, for twelve years.

Q. When were those twelve years? What is the span? A. 1937 to 1948.

[299] Q. Have you had any training in psychology as part of your education, Reverend? A. Yes, sir.

Q. Would you describe that. A. As part of my master's work at Columbia I had several courses at the New York Psychiatric Institute in social psychiatry. I had some psychology as part of my undergraduate work.

Q. Do you belong to any professional or religious organizations, Reverend? A. Academy of Religion and Mental Health is one of them.

Q. As part of your experience have you acted in the capacity of counselor? A. Yes, sir, in all phases of my work as pastor, as chaplain, and in my present position.

Q. Reverend, have you read "The Housewife's Handbook on Selective Promiscuity" by Rey Anthony? A. Yes, sir.

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Q. Reverend, based on your education and experience, would you use this book in counseling parishioners or in counseling people? A. No, sir.

Q. Why would you not use it? A. I would regard it as detrimental to a person who already [300] is having problems. I see no positive value in it.

Mr. Creamer: No further questions.

The Court: Cross-examination, please.

Mr. Shapiro: May we have a few moments, Your Honor?

The Court: Yes.

Mr. Dickstein: No questions.

Mr. Creamer: Thank you very much, Reverend.
(Witness excused.)

Mr. Creamer: If Your Honor pleases, that concludes the Government's rebuttal testimony.

The Court: Would the defense like to produce anything, any testimony?

* * *

[302] Mr. Shapiro: Your Honor, the defense now, after the close of the entire case, renews its motion for judgment of acquittal. I am renewing the motion we made at the close of [303] the Government's case and again making our motion for judgment of acquittal.

Now, before Your Honor hears me with respect to this, there is another matter which we feel perhaps should not be on the record, and we ask that the Court grant a recess to consult with counsel in chambers with respect to this problem.

The Court: Consult with counsel in chambers?

Mr. Shapiro: Yes, Government counsel and defense counsel.

The Court: But not the Court?

Mr. Shapiro: And of course with the Court.

The Court: I see. We will be glad to do that.

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We will see if we can use Judge Kirkpatrick's chambers.

Mr. Creamer: If Your Honor please, if there is any argument on a motion for a judgment of acquittal, I would prefer it to be incorporated in tomorrow's argument.

The Court: No, I will hear that now, because if there would be an acquittal by the Court on any one of the number of counts, we wouldn't have to proceed on all the counts then in the case.

Mr. Creamer: Very well, sir.

Mr. Shapiro: Thank you.

The Court: You want to have a conference now?

[304] Mr. Shapiro: Before we get into the motion.

The Court: We will call a recess for ten minutes.

Depending on what the argument is, you will want the court stenographer present?

Mr. Shapiro: I don't really think so, Your Honor.

The Court: You don't think it is necessary, very well.

Mr. Shapiro: If you think it is necessary, I thought we ought to have him stand by, but I really don't think so.

The Court: All right.

(Recess, 10:40 o'clock A.M. until 10:50 o'clock A.M.)

(Discussion off the record in chambers.)

[305] Mr. Shapiro: If the Court please, in support of the defense's motion for judgment of acquittal I would like to review for just a moment the basic elements of the crime with which the defendants are charged.

* * *

[330] We believe that in this case this Court has no other choice but on the basis of the record before it to dismiss this indictment and grant the defense's motion for acquittal.

Thank you, sir.

The Court: You may make your motion now in regard to whatever you had in mind.

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Mr. Creamer: Thank you, sir.

If Your Honor please, the Government moves to strike defense Exhibits 1—

The Court: Just a moment, please.

Mr. Creamer: Yes, sir.

The Court: I have a chart of the exhibits. I can follow you.

Now, proceed, Mr. Creamer.

Mr. Creamer: The Government moves to strike defense Exhibits 1 through—

The Court: No. 1?

Mr. Creamer: D-1 through D-8.

The Court: Just a moment.

Mr. Creamer: Yes, sir.

The Court: I have 1 without a note.

Mr. Creamer: There is a picture of a pig on the front.

The Court: Is that one of the little booklets? [331]
Let me see it.

Mr. Creamer: Yes, sir. These are the exhibits that I am now moving to strike.

Mr. Shapiro: That's the hard-core pornography, Your Honor, D-1 through D-8.

The Court: Well, I haven't seen any of these.

Mr. Creamer: No, sir.

The Court: All right.

Mr. Creamer: Your Honor, the Government moves to strike these exhibits.

The Court: In other words, these are all introduced as hard-core pornography?

Mr. Shapiro: That's right, sir.

The Court: On which I gave counsel for the Government leave to strike at the end. All right.

Mr. Creamer: We move to strike these on the ground that they are irrelevant and immaterial to the trial of this case. There has been no evidence to the effect that these are similar works as to the one on trial. I am sure they

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are not going to allege it at this point. We base this on the Wilmack decision that these should be stricken from the record.

The Court: Just a moment, please. I have D-1 to D-8. Refused.

[332] Mr. Creamer: If Your Honor please, to be consistent I also move to strike the testimony of Dr. McCormick with regard to these exhibits.

The Court: Refused.

Mr. Creamer: The Government moves to strike defense Exhibit No. 9 which is the "Fanny Hill" work on the same grounds as previously stated.

The Court: Refused.

Mr. Creamer: And to be consistent the Government moves to strike the testimony of Mr. Macdonald with regard to "Fanny Hill."

The Court: Refused.

Mr. Creamer: The Government moves to strike defense Exhibits D-10 through D-43 on the same basis.

The Court: Refused.

Mr. Creamer: The Government respectfully moves to strike the testimony of Dr. McCormick in which he expressed responses of the average man on the basis that he was not qualified to speak concerning the average man and the impact on the average man.

The Court: Well, that's argument, so far as I am concerned, to a jury and an argument that you should make to me tomorrow.

Refused.

[333] Mr. Creamer: I would make that motion to strike with regard to each of the other expert witnesses.

The Court: Refused.

Mr. Creamer: Where they testified about the community standards or the average individual.

The Court: Refused.

Mr. Creamer: Thank you, sir.

*Rev. Adolph Emil Kannwischer—for Government—
Rebuttal—Direct*

The Court: Now, gentlemen, because of the problems you have raised I will not be able to rule on this motion until tomorrow morning, so that you will have to be prepared, and I will rule on it tomorrow morning at 10:00 o'clock. You have cited too many cases for me to rule on it at 2:00 o'clock, so we will now recess until 10:00 o'clock tomorrow morning and we will proceed then to hear the arguments of counsel with regard to the matters before the Court.

* * *

[335] Mr. Shapiro: Your Honor said that he would make a ruling with regard to the motion for acquittal this morning and subsequent to that we have one preliminary matter.

The Court: The motion is refused.

Mr. Shapiro: Now, we have one preliminary matter, Your Honor, and that's with regard to Rule 23(c). The defense requests in accordance with Rule 23(c) of the Federal Rules of Criminal Procedure that in the event of a finding of conviction the Court make findings of fact especially with regard to each essential element of the [336] crime.

Mr. Creamer: Pardon me, Your Honor. I would like an opportunity to explore this since it is not a matter that we are faced with at this time.

The Court: The ruling will be reserved.

Mr. Creamer: Thank you, sir.

* * *

[362] Mr. Creamer: Sir, could I interrupt one moment?

The Government has no objection to specific findings of fact as requested by the defendants.

The Court: We will have to decide that at the end of the argument—

Mr. Creamer: Yes, sir.

Colloquy

The Court: —because we have this problem of the next case.

Mr. Creamer: Yes, sir.

The Court: And I do not believe that we will be able to do it, but I have to determine that later on.

Mr. Creamer: I don't think there will be any necessity for a time discussion on that.

The Court: I will determine that before tomorrow morning; maybe late today, and I will let you all know.

* * *

[393] Mr. Creamer: * * *

Now Mr. Shapiro has indicated that the Government concedes that all the publications are not hard-core pornography. We do not concede either as to Liaison or the Handbook.

* * *

[398] The Court: Gentlemen, I will review your arguments and various other matters that I have to review and arrive at a decision by tomorrow morning, somewhere between 10:00 and 12:00; in other words, before I take my next case.

* * *

[401] The Court: In the matter of the United States of America versus Ralph Ginzburg, Documentary Books, Inc., Eros Magazine, Inc., Liaison News Letter, Inc., I find the defendants guilty on all counts.

There was a request by counsel for the defendants in regard to special findings of fact, and I will find the facts especially as requested by defendants' counsel. At the earliest possible time they will be found.

Meanwhile, I would like to request the Government through Mr. Creamer to submit to me proposed findings.

Mr. Creamer: Yes, sir.

* * *

**Defendants' Motion in Arrest of Judgment or, in the
Alternative, for a New Trial**

Come now defendants and move for an order granting arrest of judgment pursuant to Rule 34 of the Federal Rules of Criminal Procedure or, in the alternative, for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

As grounds for this motion, defendants allege:

(1) the indictment fails to allege a violation of 18 U. S. C. § 1461;

(2) the Government failed to prove that either "Eros, No. 4", "Liaison News Letter, Vol. I, No. 1" or "The Housewife's Handbook on Selective Promiscuity" was obscene under 18 U. S. C. § 1461;

(3) the trial court failed to read "The Housewife's Handbook on Selective Promiscuity" prior to ruling on both defendants' motion to dismiss the indictment and defendants' motion to acquit at the close of the Government's case; and

(4) the trial court failed to make findings as required by Rule 23(c) of the Federal Rules of Criminal Procedure.

As further grounds for this motion, defendants refer this Honorable Court to the Memorandum of Law annexed hereto.

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Special Findings of Fact, Dated August 6, 1963

BODY, J.

August 6, 1963

After trial held before the Court upon waiver of jury by defendants herein, and pursuant to Rule 23(c) Federal Rules of Criminal Procedure, and request therefor made by defendants, the following special findings of fact are made a part of the record in this case and the same shall apply to each and every defendant on the appropriate counts of the indictments:

1. The stipulation entered into by counsel for defendants and counsel for the government, and approved by this Court, dated May 8, 1963, filed the same day (Clerk's File, Document Number 12) is hereby incorporated in its entirety as a finding of this Court.
2. The mailing of "Liaison" Vol. 1, No. 1, 1962; "Eros" Vol. 1, No. 4, 1962, and "The Housewife's Handbook on Selective Promiscuity" (referred to hereinafter as "Liaison", "Eros" and "The Handbook" respectively) was accomplished by large quantity distribution through a large mail order firm.
3. Defendants sought initially to obtain mailing from Blue Ball, Pennsylvania; secondly, from Intercourse, Pennsylvania; and finally succeeded in making arrangements for mailing from Middlesex, New Jersey, from which place all or substantially all of the mailings issued.
4. The particular places referred to in Finding No. 3 were chosen in order that the postmarks on mailed material would further defendants' general scheme and purpose.
5. The Handbook is a vivid, explicit and detailed account of a woman's sexual experiences from age three years

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to age thirty-six years which goes substantially beyond customary limits of candor exceeding contemporary community standards in description and representation of the matters described therein.

6. The Handbook appeals predominantly, taken as a whole, to prurient interest of the average adult reader in a shameful and morbid manner.

7. The Handbook is patently offensive on its face.

8. The Handbook treats sex in an unrealistic, exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

9. The Handbook has not the slightest redeeming social, artistic or literary importance or value.

10. There is no credible evidence that The Handbook has the slightest valid scientific importance for treatment of individuals in clinical psychiatry, psychology, or any field of medicine.

11. Liaison consists primarily of matters relating to sex and in doing so it goes beyond customary limits of candor, exceeding contemporary standards in description and representation of the matters described therein.

12. Liaison primarily and as a whole is a shameful and morbid exploitation of sex published for the purpose of appealing to the prurient interest of the average individual.

13. Liaison has not the slightest redeeming social, artistic or literary importance or value.

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14. Liaison is patently offensive on its face.

15. Liaison treats sex in an unrealistic, exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

16. While portions of Eros are taken from other works and may have literary merit in context, Eros appeals predominantly, taken a whole, to prurient interest of the average adult reader in a shameful and morbid manner.

17. The deliberate and studied arrangement of Eros is editorialized for the purpose of appealing predominantly to prurient interest and to insulate through the inclusion of non-offensive material.

18. Eros treats sex in an unrealistic exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

19. Eros has not the slightest redeeming social, artistic or literary importance or value taken as a whole.

In conclusion, after a thorough reading and review of all the indicted materials, this Court finds that said materials are compilations of sordid narrations dealing with sex, in each case in a manner designed to appeal to prurient interests. They are devoid of theme or ideas. Throughout the pages of each can be found constant repetition of patently offensive words used solely to convey debasing portrayals of natural and unnatural sexual experiences. Each in its own way is a blow to sense, not merely sensibility. They are all dirt for dirt's sake and dirt for money's sake.

/s/ RALPH C. BODY,
J.

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or for New Trial**

The following Special Findings of Fact which were previously entered by the Court on August 6, 1963 are hereby incorporated into and made a part of this opinion:

SPECIAL FINDINGS OF FACT

1. The stipulation entered into by counsel for defendants and counsel for the government, and approved by this Court, dated May 8, 1963, filed the same day (Clerk's File, Document Number 12) is hereby incorporated in its entirety as a finding of this Court.

2. The mailing of "Liaison" Vol. 1, No. 1, 1962; "Eros" Vol. 1, No. 4, 1962; and "The Housewife's Handbook on Selective Promiscuity" (referred to hereinafter as "Liaison", "Eros" and "The Handbook" respectively) was accomplished by large quantity distribution through a large mail order firm.

3. Defendants sought initially to obtain mailing from Blue Ball, Pennsylvania; secondly, from Intercourse, Pennsylvania; and finally succeeded in making arrangements for mailing from Middlesex, New Jersey, from which place all or substantially all of the mailings issued.

4. The particular places referred to in Finding No. 3 were chosen in order that the postmarks on mailed material would further defendants' general scheme and purpose.

5. The Handbook is a vivid, explicit and detailed account of a woman's sexual experiences from age three years to age thirty-six years which goes substantially beyond cus-

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tomary limits of candor exceeding contemporary community standards in description and representation of the matters described therein.

6. The Handbook appeals predominantly, taken as a whole, to prurient interest of the average adult reader in a shameful and morbid manner.

7. The Handbook is patently offensive on its face.

8. The Handbook treats sex in an unrealistic, exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

9. The Handbook has not the slightest redeeming social, artistic or literary importance or value.

10. There is no credible evidence that The Handbook has the slightest valid scientific importance for treatment of individuals in clinical psychiatry, psychology, or any field of medicine.

11. Liaison consists primarily of matters relating to sex and in doing so it goes beyond customary limits of candor, exceeding contemporary standards in description and representation of the matters described therein.

12. Liaison primarily and as a whole is a shameful and morbid exploitation of sex published for the purpose of appealing to the prurient interest of the average individual.

13. Liaison has not the slightest redeeming social, artistic or literary importance or value.

14. Liaison is patently offensive on its face.

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15. Liaison treats sex in an unrealistic, exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

16. While portions of Eros are taken from other works and may have literary merit in context, Eros appeals predominantly, taken as a whole, to prurient interest of the average adult reader in a shameful and morbid manner.

17. The deliberate and studied arrangement of Eros is editorialized for the purpose of appealing predominantly to prurient interest and to insulate through the inclusion of non-offensive material.

18. Eros treats sex in an unrealistic, exaggerated, bizarre, perverse, morbid and repetitious manner and creates a sense of shock, disgust and shame in the average adult reader.

19. Eros has not the slightest redeeming social, artistic or literary importance or value taken as a whole.

DISCUSSION

On March 15, 1963 the Grand Jury in the Eastern District of Pennsylvania returned a 28 count indictment charging defendants with mailing obscene publications and advertisements for those publications in violation of 18 U. S. C. 1461. Defendants filed a motion to dismiss various counts of the indictment under Rule 12 of the Federal Rules of Criminal Procedure. Subsequent thereto, the Government filed a motion to strike the affidavit and exhibits appended to defendants' motion to dismiss the indictment. Oral argument was heard on both of these motions on May 17,

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1963, and on that day the Court granted the Government's motion. On May 23, 1963 the Court denied defendants' motion to dismiss the indictment. From June 10 to June 14, 1963 the case was tried before the Court without a jury, and all defendants were found guilty on all counts. Defendants have filed a Motion in Arrest of Judgment, or, in the alternative for a New Trial, which motion is now before the Court.

A stipulation of counsel has been filed and approved by the Court. In this document the United States agrees that the advertising material (attached as exhibits to the stipulation) is not in and of itself obscene. In 1960, defendants admitted that said advertising material mailed by defendants on the occasions alleged in the indictments with full knowledge of the nature of the contents thereof. In addition, counsel agreed that the alleged non-mailable materials, Liaison, Eros and The Handbook, were to be considered a part of the indictments as though fully set forth at length therein. Oral argument on the motions was waived by counsel. These motions are: a motion in arrest of judgment and, in the alternative, a motion for a new trial. In support of both motions defendants raise four issues.

**ALLEGED FAILURE OF THE COURT TO COMPLETELY
READ THE INDICTMENT BEFORE RULING ON THE
SUFFICIENCY THEREOF**

During the presentation of the defendants' case the Court made a statement with respect to The Handbook which indicated that the Court had not read parts of The Handbook. Prior to this incident, the Court had denied the defendants' motions for dismissal of the indictment and for acquittal at the close of the Government's case. The issue presented by this situation is an issue only if

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one assumes that the stipulation requires that the Court consider the materials as part of the indictment. We assume this to be the case for purposes of disposing of defendants' contentions.

It is axiomatic that in ruling on motions involving the sufficiency of an indictment, the Court should read that indictment. We agree, therefore, that the indictment should be read by the Court. However, the Court did read the indictments involved herein before any decisions were made on any aspects of this case. It is true that not all, that is to say, not each and every word or sentence of each of the indicted materials was read in advance of all of the Court's rulings. Nevertheless, the original indictments were read. Moreover, the Court read enough of the indicted materials to be able to rule as a matter of law that the Government had made out a prima facie case. We do not deem it necessary to read each and every word or sentence of the indicted materials in an obscenity case in order to ascertain whether there is a prima facie case.

While it is true that in considering material in an obscenity case, the work as a whole must be examined; *Roth v. United States*, 354 U. S. 476 (1957); it is not necessary to make a detailed and exhaustive examination on preliminary motions. Common sense dictates a realistic approach to this matter. The Handbook has 240 pages exclusive of introductory material. The material therein is extremely boring, disgusting, and shocking to this Court, as well as to an average reader. It was simply too offensive to stomach in the first instance. Even a fast reading, skipping the obviously repetitious phrases and descriptions, readily discloses the impact and essence of the book.

The rule is that when a defendant presents testimony and other evidence after a motion for acquittal has been overruled, the objections to the denial of his motion are waived, *United States v. Calderon*, 348 U. S. 160 (1954).

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On the merits, since the Trial Court has since read all of The Handbook word by word, if there was error it is harmless. If in fact the material is obscene as a matter of fact and law, defendant was not prejudiced. This case was tried without a jury and the ultimate test after the case was submitted to the fact finder was much higher than it was when the Court disposed of defendants' pre-trial motions.

FAILURE OF THE TRIAL COURT TO ENTER SPECIAL FINDINGS
CONCURRENTLY WITH THE GENERAL FINDING

It may be that better practice in many criminal cases calls for the entry of special findings at the time the general finding is made when the Court sits without a jury. *Benchwick v. United States*, 297 F. 2d 330 (9th Cir. 1961). This does not mean that it is required that both types of findings be made simultaneously. No case has been cited by counsel which so holds, and in like manner, exhaustive research discloses no such rule as contended for by defendants.

During the trial the Court made it clear to counsel on more than one occasion that the entry of special findings would be delayed beyond the entry of a general finding if a general finding of guilty was to be entered on any of the counts. There were no objections by defendants' counsel to this proposed procedure. Thus, any objection to the delayed entry of special findings was waived by silence on the record. Likewise after verdict was rendered by the Court, no objections were stated for the record at that time.

On the merits, this was not an ordinary criminal case where fundamental operative facts had to be determined. Most of the facts are not clear and precise but instead are mixed with questions of law. This is the nature of the

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case. It is necessary in such a case for the Court to carefully consider all the legal ramifications of the factual setting, which is really largely agreed upon. Such careful consideration requires detailed legal research and assistance of counsel. Consequently, the Trial Court requested proposed findings and such other assistance as counsel could offer. Defendants were not precluded from submitting findings but apparently chose not to do so. We find no merit in this issue raised by them, apparently as an afterthought.

OBSCENITY

The remaining contentions of defendant attack the decision of the Court that as a matter of fact and of law the indicted materials are obscene under 18 U. S. C. 1461.

In order that freedom of speech may remain protected and inviolate, the law requires definite standards for a finding of obscenity. These standards are set forth generally in the case of *Roth v. California*, 354 U. S. 476 (1957). All ideas, no matter how obnoxious, unorthodox or controversial are protected. If material has any socially redeeming importance it is protected. Beyond this, material to be obscene must encroach upon significant interests of society, and thereby injure society without justification. Material embodied in permanent form and distributed generally does this when it is obscene. *Roth v. California, supra*. Something is obscene according to the *A. L. I., Model Penal Code*, § 207.10(2):

“ * * * (I)f, considered as a whole, its predominant appeal is to prurient interest, i.e., a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters * * *.”

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Roth v. California, *supra*, at page 489, requires further that the material to be obscene must appeal in the above manner to the prurient interest of the average person, applying contemporary community standards. This has been held to mean that the standard is not to be applied from the point of view of particularly susceptible persons in the community. *Manual Enterprises v. Day*, 370 U. S. 478 (1962).

In deciding whether the subject materials are obscene, each must of course be separately treated.

"LIAISON" VOL. 1, No. 1

Liaison is a newsletter or periodical folder type of publication consisting of commentary from various sources with a general editorial treatment. Specifically it deals with such subjects as "Slaying the Sex Dragon", "Semen in the Diet" and "Sing a Song of Sex Life." The material covers the most perverse and offensive human behavior. While the treatment is largely superficial, it is presented entirely without restraint of any kind. According to defendants' own expert, it is entirely without literary merit. We agree. If there is any socially redeeming value in this material it must come from what is advocated or from its entertainment value. There are jokes and rhymes which clearly go beyond contemporary community standards of humor, even in applying liberal night club standards. The remainder of the material is of the same nature and exceeds the standard in the same manner.

One could take an entirely different view of some of the material in *Liaison* if it were artfully contrived or manipulated in a literary manner by incorporation into a work of merit to serve a legitimate purpose of an author in recording human experience or in seeking to accomplish a worthy objective. See, for example, *Grove Press, Inc. v.*

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Christenberry, 276 F. 2d 433 (2d Circ. 1960) where it was held that the book *Lady Chatterley's Lover* was not obscene.

Unfortunately, however, *Liaison* is designated obviously and solely for the purpose of appealing to the prurient interest of an ordinary person. The only idea advocated is complete abandon of any restraint with regard to any form of sexual expression. This "idea" is nothing more than could be advocated by the most flagrant pornography, samples of which were submitted to the Court by defendants as examples of obscenity. Ideas must go beyond this point in order to be protected. The alternative is the absence of any restraint on written material from the point of view of obscenity.

"EROS" VOL. 1, No. 4, 1962

Eros is a carefully contrived magazine or periodical type of publication with a hard cover and glossy paper. It is replete with photographs and includes reproductions of recognized works of art. Nevertheless, as in the cases of *Liaison* and of *The Handbook* the dominant appeal is to pruriency. The works of art, such as biblical quotations and reproductions of the creations of recognized artists, are merely a facade to disguise and protect the basic purpose and effect of the entire work. This basic purpose and effect becomes evident as one progresses through the pages.

Although it is difficult to classify all of the articles in *Eros* into specific categories, there is a clearly defined arrangement to the material. To some, several articles might be considered innocuous, only slightly erotic and possibly not obscene in and of themselves. These are: "New Twists and 3 Great Trysts"; "The Jewel Box Revue", the series of photographs on marriage, circa 1903; *The Short Story* by Ray Bradbury; "Memoirs of a Male Chaperon"; "President Harding's Second Lady"; "Was Shakespeare

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a Homosexual"; "Sex and the Bible"; and perhaps Ivan Graznis' version of "Lysistrata". If the entire work consisted merely of these articles there might be no finding of obscenity in this case. This does not mean that the articles have no effect upon the finding of obscenity with regard to the periodical as a whole. Here is a pattern. Here is a craftily compiled overall effect and since the work must be considered as a whole, material which might be innocuous alone partakes of the obscenity elsewhere in Eros and becomes part and parcel of the overall plan and intent of the work. It is the opposite of the usual situation as in a novel where the dominant interest and theme is of social importance, and what would be patent obscenity standing alone is insulated and protected and saved from condemnation because of the work of art in which it is incorporated. *Grove Press, Inc. v. Christenberry, supra.*

Eros is the reverse situation from Lady Chatterley's Lover. There the author used material which, *taken out of context*, would have been clearly obscene. Nevertheless, the court found no obscenity because of the saving grace of the book as a whole. Eros has no saving grace. The items of possible merit and those items which might be considered innocuous are a mere disguise to avoid the law and in large measure enhance the pruriency of the entire work. The only overriding theme of Eros is the advocacy of complete sexual expression of whatever sort and manner. The most offensive pornography imaginable, examples of which were submitted by defendants as exhibits in this case, has the same dominant effect and purpose. Even so, of course, the dissemination of the idea of complete sexual freedom cannot constitutionally be punished. Therefore, it must be the *manner* of dissemination which is objectionable.

In considering the manner of expression of the idea then, we come to the work itself in its obscene portions. The articles called: "Frank Harris, His Life and Loves"

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including "My Life and Loves" by Frank Harris; "Bawdy Limericks" and the "Natural Superiority of Women as Erotocists" and "Black and White in Color" are such that standing alone, one has little difficulty in finding all of the requisite elements of obscenity. For example: "Bawdy Limericks" consists of the grossest terminology describing unnatural, offensive, disgusting and exaggerated sexual behavior. Also by way of example: the series of pictures, "Black and White in Color", constitutes a detailed portrayal of the act of sexual intercourse between a completely nude male and female, leaving nothing to the imagination. This material meet defendants' own experts' definition of obscenity as well as counsel's legal definition.

Pruriency is required and is defined as an itching longing, morbid or shameful sexual desire. *Roth v. California, supra*. When material creates in the reader shame and guilt feelings simultaneously with sexual arousal, the result is usually obscenity. The material listed above clearly qualifies. There is no notable distinction between the aforesaid, taking each one as a whole, and the admittedly obscene material which was in evidence for comparison purposes.

The impact of these articles and items is sufficient to permeate the entire volume of Eros. By reading the article "A Letter from Allen Ginsburg" it becomes evident that the intent of the disseminator here was to cause this permeation, i.e., this "Letter" is a statement of the purpose of Eros. It is clear that there is no possible other way to view the matter. When material is composed of several portions, not related except insofar as each deals with sex in various forms, and at the same time this material includes obscene items, if these items are tested standing alone and if at the same time a single purpose of destruction of all barriers against sexual behavior of any kind is advocated along with the advocacy of removal of restraint by government over the dissemination of any written material

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whatsoever, there is but one conclusion. That conclusion is: there is specific intent to destroy any limitations whatsoever over any medium of human communication regardless of the extent of abuse of that medium through the use of obscenity. Therefore, defendants are in the unsavory position of advocating that obscenity should be disseminated, and at the same time they are deliberately purveying material through the mails which material is designed to break down those barriers imposed by the statute.

The inserting of innocuous material along with obscene material cannot shield the latter. If it could, the Bible itself could readily be rendered obscene, and yet could be disseminated without restraint, merely though the expediency of illustrating sexual references with grossest pornographic photographs and by giving the participants biblical names. The answer is clear. It is one thing to create an integrated work of art containing what would be obscenity standing alone, and another thing to create an integrated work of obscenity containing excerpts from recognized works of art.

It is interesting to note that in defining pornography, defendants' expert stated that it is common in such material that matters usually treated with respect, such as religion, are juxtaposed with and mocked by the writer. Inaccuracy and imaginary psychotic references to sexual activity is rampant in such works. Eros contains these elements. The front and back covers and the lead article deal with the Bible itself. "Bawdy Limericks" meets the test of bizarre and unrealistic treatment of sex. "The Sexual Side of Anti-Semitism" is headlined with a paragraph taken from the mouth of a psychotic person. These examples, and those elsewhere in this opinion, are offered as typical and are not by any means designed to constitute an exhaustive exposition of all of the material relevant to a finding of obscenity in detail. To do this would require a good-sized novel. Defendants press us for a quick dis-

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position in order that their business not be ruined since they fear to continue publishing in the face of the finding of guilt. We, therefore, doubt that defendants are interested in a large volume of discourse in this opinion.

**"THE HOUSEWIFE'S HANDBOOK ON SELECTIVE
PROMISCUITY" BY REY ANTHONY**

The Handbook requires little discussion. This book is of a kind with the above-mentioned admittedly hardcore pornography. It is an explicit description of a woman's sexual experiences from early childhood and thereafter throughout most of her life. It purports to be, and the authoress so stated under oath, a factual and highly accurate reporting of actual occurrences. In fact Mrs. Lillian Maxine Serett, the authoress, stated: "I have lived every minute of it, or every page of it * * *" (N.T. page 121). We doubt the accuracy of this book. It also easily meets the previously mentioned tests of bizarre exaggeration, morbidity and offensiveness.

The Handbook's description of various sexual acts is astounding. As in the case of *Liaison*, no literary merit is ascribed to the book. Its sole claim to redeeming value is its alleged value as a clinical device to "ventilate" persons with sexual inhibitions and misconceptions. Any testimony to this effect is expressly disbelieved by this Court. One must regretfully note in passing that teen-age children were, and would be in the future, "ventilated" with this book by the witness who was alleged to be an expert clinical psychologist and also was an ordained minister. This same witness shocked the writer by saying that this book should be in every home and available for teen-agers for guidance in sex behavior, but in my opinion misbehavior.

The Handbook, standing bare of any socially redeeming value, is a patent offense to the most liberal morality. The

*Opinion, Filed November 21, 1963, Denying Defendants'
Motion on Arrest of Judgment, or for New Trial*

descriptions leave nothing to the imagination, and in detail, in a clearly prurient manner offend, degrade and sicken anyone however healthy his mind was before exposure to this material. It is a gross shock to the mind and chore to read. Pruriency and disgust coalesce here creating a perfect example of hardcore pornography.

CONCLUSION

Defendants place great weight on the requirement of the definition of obscenity, as they see it, which protects works which do not exceed contemporary community standards of candor in expression. There is no question that all three of the indicted materials exceed this standard. Certain materials sold openly on local newsstands were submitted to show what the acceptable limits of candor are today. Without so deciding, it may well be that these materials exceed the contemporary standard themselves. At any rate, supplying this Court with such materials does not provide conclusive evidence of the standard set by the community as a whole. Doubtless but a sliver of the community reads such things and there is no doubt the community as a whole does not necessarily tolerate them. For all the Court knows, local action before this and in the future will result in the removal of this type of material from the newsstands. This Court has the power and the right as a fact finder and as one who is aware of all types of material sold, tolerated and not tolerated by the community as a whole, to find, as it has found, that the material in question exceeds the standard. It does so unequivocally.

We have been regaled with the theory that the susceptibility of no single segment of the community is to be the paramount consideration in deciding whether a work is obscene. *Manual Enterprises v. Day*, supra. This is the law and we do not argue with it. It is also the law that the community as a whole is the proper consideration. In this

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community, our society, we have children of all ages, psychotics, feeble-minded and other susceptible elements. Just as they cannot set the pace for the average adult reader's taste, they cannot be overlooked as part of the community. The community as a whole is not an ideal man who wouldn't seek and read obscenity in the first place. Otherwise no restraint at all would be required. Some is proper. *Roth v. California, supra*. Therefore, an ideal person without any failings or susceptibility is not the man to protect. Society as a whole, replete of course with various imperfections, must be protected.

There must come a time when the law must take a stand and determine what is legally obscene. It is all a matter of degree. Each publication is to be judged by itself, cover to cover, and as a whole. It is not merely a matter of four letter words, or the quantity of them. It is a matter of our concept of obscenity as defined and limited by the United States Supreme Court.

**Order, Dated November 21, 1963, Denying
Defendants' Motion in Arrest of Judgment,
or for New Trial**

AND NOW, this twenty-first day of November, 1963, in accordance with the foregoing opinion, IT IS ORDERED that the motions of defendants in Arrest of Judgment and, in the alternative, for a New Trial, be and the same are hereby DENIED.

IT IS FURTHER ORDERED that the defendants are called for sentence on November 27, 1963 at 10:00 A. M. in a courtroom of the United States District Court for the Eastern District of Pennsylvania.

/s/ RALPH C. BODY,
J.

**Excerpts from Transcript of Proceedings of
December 19, 1963**

* * *

[14] The Court: Does the United States Attorney have anything to say?

Mr. Creamer: Yes, thank you, Your Honor.

May it please the Court, we have come to the end of a long reign of technicalities. Mr. Ginzburg has been convicted on 28 counts of sending obscene material through the mail.

Mr. Dickstein seems to feel that since Mr. Ginzburg did not operate out of a backroom somewhere and push these publications furtively that therefore his crime is not a heinous one, not a very severe one, hardly meets the statute, but I call to Your Honor's attention the fact that Title 18 United States Code, Section 1461, contains no provision that distribution of obscene material must be done furtively. As a matter of fact, to fit Mr. Ginzburg's [15] plan the last thing in the world that he would want to do would be to distribute this material furtively, and I say that because Mr. Ginzburg's plan which Your Honor has pronounced in your opinion after trial was quite clear to get the widest distribution and greatest circulation that he could, because it is clear from the trial and the case itself that this was a commercial venture. I am amazed that Mr. Dickstein would place Mr. Ginzburg in the role of a crusader for freedom when Eros was selling for approximately \$25 a year for a subscription; Liaison, \$18 a year; and The Housewife's Handbook for \$4.95. I think that Your Honor realizes and knows from the full trial that was held in this case that this was a commercial venture, that this was a gigantic widescale pandering to the public in an attempt to distribute and disseminate this material.

Mr. Dickstein seeks refuge in the fact that Maxine Serett did in fact distribute through the mails without

*Excerpts from Transcript of Proceedings of
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post office interference many copies of The Housewife's Handbook on Selective Promiscuity before in effect Mr. Ginzburg acquired the franchise to distribute it on the grand scale. I submit to Your Honor that Maxine Serett was distributing these books or this Housewife's Handbook only to physicians; she never had widespread, indiscriminate distribution of the Handbook, and, consequently, the Post [16] Office Department did not interfere with her distribution of the publication. If Mr. Ginzburg had distributed and sold and advertised these books solely to the 1700 physicians which Mr. Dickstein mentions, we, of course, would not be here this morning with regard to The Housewife's Handbook on Selective Promiscuity.

Speaking in regard to Liaison I think Your Honor will recall that even their own experts indicated that this had no literary merit certainly and was completely valueless in the literary field. Mr. Dickstein has mentioned that there were six issues of Liaison before the prosecution and that only prosecution was on the first issue or Mr. Darr's issue. Of course, I call the Court's attention that Mr. Ginzburg and his attorney have stipulated that Mr. Ginzburg sent the first edition of Liaison through the mails knowing the contents fully thereof and then I would further call to Your Honor's attention that many of the articles, at least a half dozen that appeared at subsequent times, in subsequent issues of Liaison, were written by Mr. Darr.

Finally, we reach the Eros publication or what Mr. Ginzburg created as pornography for snobs, that is, by embracing it in an aura of respectability, by disguising it with a pseudo-art and pseudo-intellectualism, he attempted to pander it to the largest group he could find but, [17] of course, he wanted the upper income group so that they could afford the rich paper and the fine backing of the publication.

Finally, Your Honor, I would submit that this case was fully and fairly tried, that Mr. Ginzburg is certainly not a

*Excerpts from Transcript of Proceedings of
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crusader for freedom, that he is one who walked the narrow margin, as close as he could to the precipice, thinking they will never get him on an obscenity charge because he has insulated himself so much with works of art and things of that nature. I think that it is quite clear from the trial of this case that he knew exactly what he was doing all the time, and at this time I would like to call upon the United States Attorney to make some further comments.

Thank you, Your Honor.

The Court: Mr. O'Keefe, you may address the Court.

Mr. O'Keefe: Thank you, Your Honor.

If Your Honor please, as you know it is not very often that I come down to the court at the time of sentencing because I think my staff are capable of handling the matters that they have tried before this and the other judges in the district, and I would like to comment and say at this time that Mr. Creamer in my opinion did a marvelous job in this case, but I feel it incumbent upon me because [18] of the nature of this case to stand before the Court today at the time of sentencing.

If I were to listen to counsel for the defendant, as he said, this is not an ordinary man, an ordinary defendant that is standing here before this Court today. I agree with him; he is not an ordinary man, he is not as bad as the rest of them. In my opinion he is worse and that's why I am here.

This case is not a case that reaches just into the Eastern District of Pennsylvania. This is a case that reaches throughout the United States, and it is an important case to the Department of Justice, to the Attorney General and in my opinion to every citizen in the United States, and that again is why I am standing here.

Listening again to counsel for defendant I thought he was going to mention among those who agreed with Mr. Ginzburg Drew O'Keefe and Shane Creamer pretty soon, but that's not the point. This man has been tried. He has

*Excerpts from Transcript of Proceedings of
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been tried fairly. He has been convicted and he is here to be sentenced, and I ask this Court who is very familiar with this case to give this man the most substantial sentence you possibly can under all of the circumstances.

Thank you, Your Honor.

[19] The Court: Mr. Shapiro, would you like to say anything?

Mr. Shapiro: No, thank you, Your Honor.

The Court: Would you like to say anything more, Mr. Dickstein?

Mr. Dickstein: No, Your Honor.

The Court: The defendant may address the Court.

Defendant Ginzburg: I think my attorney has expressed—

The Court: I can't hear you, sir.

Defendant Ginzburg: I think my attorney has expressed my messages, thank you.

The Court: You have nothing you would like to add?

Defendant Ginzburg: No, sir, thank you.

The Court: It is my recollection among other matters and testimony that—I have forgotten how many Handbooks were mailed; it was agreed and stipulated to by the defense and the prosecution—but I have a recollection that there were over six million advertising circulars sent out from Middlesex, New Jersey, advertising the various items that we are concerned with here.

Mr. Dickstein: These were mailing pieces [20] for Eros subscriptions.

The Court: Mailing subscriptions for Eros alone? I didn't know whether it was Eros and The Handbook or just The Handbook, but I am talking about the testimony. I don't have the testimony here this morning but I think there is little further I need say. I have said everything that I care to say in regard to the offenses committed by the defendants in the opinion which was filed some months ago. I will now sentence the defendant.

*Excerpts from Transcript of Proceedings of
December 19, 1963*

In the matter of the United States of America vs. Ralph Ginzburg, Documentary Books, Inc., Eros Magazine, Inc., and Liaison News Letter, Inc., Criminal Case No. 21367, the sentence of the Court is as follows:

As to Count No. 1, the sentence of the Court is that Ralph Ginzburg pay a fine of \$1000 and the corporate defendant, which I believe is—

Mr. Creamer: Documentary Books.

The Court: —Documentary Books, a fine of \$500.

As to Count No. 2, the defendant is sentenced to pay a fine of \$1000 and Documentary Books, Inc., a fine of \$500.

As to Count No. 3, a fine of \$1000 as to Ralph Ginzburg, and \$500 as to the corporate defendant, [21] Documentary Books.

As to Count No. 4—

Mr. Creamer: Liaison.

The Court: As to Count No. 4, a fine as to Ralph Ginzburg—the fine is \$1000 as to Ralph Ginzburg—and \$500 as to the corporate defendant, Liaison.

As to Count No. 5, the fine is \$1000 as to Ralph Ginzburg and \$500 as to the corporate defendant, Liaison News Letter.

As to Count No. 6, the fine is \$1000 as to Ralph Ginzburg and \$500 as to the corporate defendant, Liaison News Letter.

As to Count No. 7 which concerns Eros the fine is \$1000 as to Ralph Ginzburg and \$500 as to Eros Magazine, Inc.

As to Count No. 8, the fine is \$1000 as to Ralph Ginzburg and \$500 as to Eros Magazine, Inc.

As to Count No. 9, the fine is \$1000 as to Ralph Ginzburg and \$500 as to Eros Magazine, Inc.

As to Count No. 10, the fine is \$1000 as to Ralph Ginzburg and \$500 as to Eros Magazine, Inc.

As to Count No. 11, which concerns The Handbook, the sentence of the Court is imprisonment for three years [22]

*Excerpts from Transcript of Proceedings of
December 19, 1963*

as to Ralph Ginzburg and \$1000 fine, and as to Documentary Books, Inc., a fine of \$500, and in like manner, Counts 12, 13, 14, and 15, there will be the same sentence.

Count No. 12, imprisonment for three years, fine of \$1000 as to Ralph Ginzburg, and a \$500 fine as to Documentary Books.

As to Count No. 13, imprisonment for three years, a \$1000 fine as to Ralph Ginzburg, and \$500 as to Documentary Books, Inc.

Count No. 14, imprisonment for three years, a \$1000 fine as to Ralph Ginzburg, and \$500 fine as to Documentary Books.

As to Count No. 15, three years imprisonment, a \$1000 fine as to Ralph Ginzburg, and \$500 fine as to Documentary Books.

As to Count No. 16, imprisonment for three years and a \$1000 fine as to Ralph Ginzburg, and a \$500 fine as to Documentary Books.

The imprisonment imposed on Counts 11, 12, 13, 14, 15, and 16 shall run concurrently and not consecutively.

As to Count No. 17 which concerns the Eros Magazine the sentence of the Court is imprisonment for two years and a \$1000 fine as to Ralph Ginzburg, and a \$500 fine as to Eros Magazine, Inc.

[23] As to Count No. 18, two years imprisonment, a \$1000 fine as to Ralph Ginzburg, and \$500 fine as to Eros Magazine, Inc.

As to Count No. 19, two years imprisonment, a \$1000 fine as to Ralph Ginzburg, and \$500 fine as to Eros Magazine, Inc.

Count No. 20, two years imprisonment and a \$1000 fine as to Ralph Ginzburg, and a \$500 fine as to Eros Magazine, Inc.

Count No. 21, imprisonment for two years, a \$1000 fine as to Ralph Ginzburg, and \$500 as to Eros Magazine, Inc.

*Excerpts from Transcript of Proceedings of
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As to Count No. 22, imprisonment for two years, a \$1000 fine as to Ralph Ginzburg, and a \$500 fine as to Eros Magazine, Inc.

The sentences of imprisonment concerning Counts 17, 18, 19, 20, 21 and 22 shall run concurrently and not consecutively.

As to Count 23 which concerns—

Mr. Creamer: Liaison, Your Honor.

The Court: This is Count 23 which concerns Liaison. The sentence as to Ralph Ginzburg is a \$1000 fine and \$500 as to Liaison News Letter, Inc.

As to Count 24, the sentence of the Court is [24] a \$1000 fine as to Ralph Ginzburg and \$500 as to Liaison News Letter, Inc.

As to Count 25, the sentence of the Court is to pay a fine of \$1000 as to Ralph Ginzburg and \$500 as to Liaison News Letter, Inc.

As to Count 26, the sentence of the Court is a fine of \$1000 as to Ralph Ginzburg and \$500 fine as to Liaison News Letter, Inc.

As to Count 27, the sentence of the Court is a fine of \$1000 as to Ralph Ginzburg and \$500 as to Liaison News Letter, Inc.

As to Count 28 and the last count, the sentence of the Court is a \$1000 fine as to Ralph Ginzburg and \$500 as to Liaison News Letter, Inc.

That is the sentence. You have a complete record.

Are there any questions by the clerk?

Mr. Creamer: If Your Honor please, just for clarification, were the sentences on Counts 11 through 16 to run concurrently with Counts 17 through 22, or consecutively?

The Court: No.

Mr. Creamer: Consecutively?

The Court: As to Counts 11 to 16, they will run concurrently. That will be three years.

*Judgment as to Defendant, Ralph Ginzburg
December 19, 1963*

[25] Mr. Creamer: Yes, sir.

The Court: Counts 17 to 22 which concern Eros—

Mr. Creamer: Eros.

The Court: —that's two years concurrently which will be two more or a total sentence of five years.

Mr. Creamer: Then the three-year sentences on Counts 11 through 16 will be followed consecutively by the two-year sentences on Counts 17 through 22?

The Court: That's right.

* * *

**Judgment as to Defendant, Ralph Ginzburg
December 19, 1963**

On this 19th day of December, 1963 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a finding of Guilty as to each of Counts 1 to 28, inclusive of the offense of Use of the mails for the mailing of non-mailable matter, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years on each of Counts 11 to 16, said sentences of imprisonment to run concurrently. On each of Counts 17 to 22, inclusive, Imprisonment for Two (2) Years, said sen-

Judgment as to Defendant, Documentary Books, Inc.

tences of imprisonment to run concurrently with each other and consecutively with the sentence imposed on each of the Counts 11 to 16, inclusive.

IT IS ADJUDGED that the Defendant pay to the United States a fine of One Thousand (\$1,000.00) Dollars on each of Counts 1 to 28, inclusive.—(Total fine \$28,000.00) (Total imprisonment Five years).

IT IS FURTHER ORDERED that the execution of said sentence be stayed pending appeal. Bail to be entered in the amount of \$10,000.00.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

RALPH C. BODY,
United States District Judge.

Judgment as to Defendant, Documentary Books, Inc.

On this 19th day of December, 1963 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a finding of Guilty as to each of Counts 1 to 3 and 11 to 16, inclusive of the offense of Use of the mails for the mailing of a non-mailable matter, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

Judgment as to Defendant, Eros Magazine, Inc.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant pay to the United States a fine of Five Hundred (\$500.00) Dollars on each of Counts 1 to 3, inclusive and 11 to 16, inclusive. (Total fine \$4,500.00.)

IT IS FURTHER ORDERED that the execution of said sentence be stayed pending appeal.

RALPH C. BODY,
United States District Judge.

Judgment as to Defendant, Eros Magazine, Inc.

On this 19th day of December, 1963 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a finding of Guilty as to each of Cts. 7 to 10, incl. & 17 to 22, incl., of the offense of Use of the mails for the mailing of non-mailable matter, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant pay to the United States a fine of Five Hundred (\$500.00) Dollars on each of Counts 7 to 10, inclusive and 17 to 22, inclusive. (Total Fine \$5,000.00.)

Judgment as to Defendant, Liaison News Letter, Inc.

IT IS FURTHER ORDERED that the execution of said sentence be stayed pending appeal.

RALPH C. BODY,
United States District Judge.

Judgment as to Defendant, Liaison News Letter, Inc.

On this 19th day of December, 1963 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a finding of Guilty as to each of Counts 4 to 6 and 23 to 28, inclusive of the offense of Use of the mails for the mailing of non-mailable matter, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant pay to the United States a fine of Five Hundred (\$500.00) Dollars on each of Counts 4 to 6, inclusive and 23 to 28 inclusive. (Total fine \$4500.00.)

IT IS FURTHER ORDERED that the execution of said sentence be stayed pending appeal.

RALPH C. BODY,
United States District Judge.

Notice of Appeal

Names and addresses of appellants:

RALPH GINZBURG,
Documentary Books, Inc.,
Eros Magazine, Inc.
Liaison News Letter, Inc.
110 West 40th Street,
New York, N. Y.

Names and addresses of appellants' attorneys:

NORMAN A. OSHTRY,
20 South 15th Street,
Philadelphia, Pennsylvania

DAVID I. SHAPIRO and SIDNEY DICKSTEIN,
1411 K Street, N.W.
Washington, D. C.

Offense: Violations of 18 U. S. C. § 1461.

Judgment appealed from: The judgment of the United States District Court for the Eastern District of Pennsylvania, Body, J., made and entered December 19, 1963, as follows:

1. Count I— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00;
Defendant, Documentary Books, Inc., sentenced to pay a fine of \$500.00.
2. Count II— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00;
Defendant, Documentary Books, Inc., sentenced to pay a fine of \$500.00.

Notice of Appeal

3. Count III— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant, Documentary Books, Inc., sentenced to pay a fine of \$500.00.
4. Count IV— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison News Letter, Inc., sentenced to pay a fine of \$500.00.
5. Count V— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison News Letter, sentenced to pay a fine of \$500.00.
6. Count VI— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison News Letter, Inc., sentenced to pay a fine of \$500.00.
7. Count VII— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Eros Magazine, Inc., sentenced to pay a fine of \$500.00.
8. Count VIII— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Eros Magazine, Inc., sentenced to pay a fine of \$500.00.
9. Count IX Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Eros Magazine, Inc., sentenced to pay a fine of \$500.00.

Notice of Appeal

10. Count X— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Eros Magazine, Inc., sentenced to pay a fine of \$500.00.
11. Count XI— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.
12. Count XII— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.
13. Count XIII— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.
14. Count XIV— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.
15. Count XV— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.
16. Count XVI— Defendant, Ralph Ginzburg, sentenced to three (3) years imprisonment and a fine of \$1,000.00; Defendant Documentary Books, Inc.; sentenced to pay a fine of \$500.00.

Notice of Appeal

17. Count XVII— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
18. Count XVIII— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
19. Count XVIII— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
20. Count XX— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
21. Count XXI— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
22. Count XXII— Defendant, Ralph Ginzburg, sentenced to two (2) years imprisonment and a fine of \$1,000.00; Defendant Eros Magazine, Inc.; sentenced to pay a fine of \$500.00.
23. Count XXIII— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.

Notice of Appeal

24. Count XXIV— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.
25. Count XXV— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.
26. Count XXVI— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.
27. Count XXVII— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.
28. Count XXVIII— Defendant, Ralph Ginzburg, sentenced to pay a fine of \$1,000.00; Defendant Liaison Newsletter Inc., sentenced to pay a fine of \$500.00.

Count XI through Count XVI imprisonment sentences to run concurrently.

Count XVII through Count XXII imprisonment sentences to run concurrently, but consecutively to Counts XI through Count XVI.

The above-named appellants hereby appeal to the United States Court of Appeals for the Third Circuit from the above stated judgment.

Dated: December 19, 1963.

s/ NORMAN A. OSHTRY,
Attorney for Appellants.

[fol. 385]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 14742, 14743, 14744 and 14745

UNITED STATES OF AMERICA,

v.

RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS MAGAZINE, INC. and LIAISON NEWS LETTER, INC., Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Argued June 16, 1964

Before :

McLAUGHLIN, KALODNER and STALEY, *Circuit Judges*.

OPINION OF THE COURT—Filed November 6, 1964

By McLAUGHLIN, *Circuit Judge*.

Appellants were convicted of violating the federal obscenity law, 8 U.S.C. § 1461. All three publications involved were found to be obscene under the statute. The record shows that in September, 1962, appellant Eros Magazine, Inc. of which appellant Ginzburg was editor and publisher, after a great deal of deliberation endeavored to obtain what was considered advantageous mailing privileges from Blue Ball, Pennsylvania. Meeting with no success there, a similar try was made with the Post Office at Intercourse, Pennsylvania. Again rejected, a [fol. 386] final successful effort was made at the Middlesex, New Jersey Post Office from which over five million advertisements of Eros were mailed. It is not disputed

that the bulk of the mailings for the three publications was from Middlesex. In the advertisements above mentioned, inter alia, appeared the following:

"The publication of this magazine—which is frankly and avowedly concerned with erotica—has been enabled by recent court decisions * * * to be published."

The magazine Eros was thereafter mailed out from Middlesex. It is with Volume 1, No. 4, 1962 thereof that we are concerned. Eros is a quarterly. Its price is \$25. a year.

The second publication was mailed in November, 1962. It was a book which had been originally titled by its author "The Housewife's Handbook for Promiscuity". That book so titled had been sold by mail to a selected list by the author. The title was later changed to read "Housewife's Handbook on Selective Promiscuity". The mailing in this instance was under the latter title. Its price is \$4.95.

The third publication is a biweekly newsletter called Liaison. According to the witness Darr who was hired by appellant Ginzburg as editor of Liaison, Ginzburg told him that " * * * Liaison was to cover the same scope [as Eros], in a more newsworthy fashion." Darr was hired after he had specially written and submitted a piece titled "How to Run a Successful Orgy". Ginzburg telephoned him and asked him "When can you start to work?" The particular piece in revised form was published in Liaison. The price of Liaison was \$15, later reduced to \$4.95.

The advertising material, concededly not obscene of itself, was admittedly mailed by appellants on the specified dates with full knowledge of its contents.

The case was tried to the court, a jury trial having been waived by appellants. The trial consumed five days. [fol. 387] Appellants were found guilty on all counts on June 14, 1963. Later, at the request of the appellants, on August 6, 1963, the court filed special detailed findings of fact. Summing up those findings, the court said:

"In conclusion, after a thorough reading and review of all the indicted materials, this Court finds that said materials are compilations of sordid narrations dealing with sex, in each case in a manner designed to appeal to prurient interests. They are devoid of theme or ideas. Throughout the pages of each can be found constant repetition of patently offensive words used solely to convey debasing portrayals of natural and unnatural sexual experiences. Each in its own way is a blow to sense, not merely sensibility. They are all dirt for dirt's sake and dirt for money's sake."

We have read, examined and considered the publications involved in this appeal, " * * * in the light of the record made in the trial court, * * * ." *Jacobellis v. Ohio*, — U.S. — (P. 11, slip op.) (1964). The only important question before us is whether the publications are obscene under the federal statute. Since this calls for a constitutional judgment it is our duty to decide it. Under the obscenity tests laid down by the Supreme Court, the Constitutional status of the publications " * * * must be determined on the basis of a national standard." *Jacobellis*, supra, p. 10, slip op. This is peculiarly fitting here where over five million advertisements for the *Eros* material were mailed out to prospects in this country.

Also we have very much in mind that as the Supreme Court stated in *Roth v. United States*, 354 U.S. 484 (1957):

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the [fol. 388] history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance."

The Court went on to say, p. 487, that " * * * sex and obscenity are not synonymous" and ruled on p. 487 that

"Obscene material is material which deals with sex in a manner appealing to prurient interest." It quoted with approval the American Law Institute, Model Penal Code, proposed official draft (May 4, 1962), § 251.41(1):

" * * * A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters * * * ."

The same necessary quality named in *Roth*, supra, and *Jacobellis*, supra, as affronting current national community standards is described in *Manual Enterprises v. Day*, 370 U.S. 478, 482 (1962) as "'patent offensiveness' or 'indecenty'". At pages 483, 484, the *Day* opinion, speaking of the federal obscenity law, notes that " * * * the statute since its inception has always been taken as aimed at obnoxiously debasing portrayals of sex. * * * the statute reaches only indecent materials which, as now expressed in *Roth v. United States*, supra, at 489, 'taken as a whole appeals to prurient interest'."

This brings us to the special circumstances revealed in the present appeal. We are not dealing with a novel by a well known novelist, written as and for a work of fiction with a firm base of opposition to well defined then existing social conditions, which was held mailable because its " * * * predominant appeal * * * [was] demonstrably not to 'prurient interest'." *Grove Press v. Christenberry*, 276 F.2d 433, 437 (2 Cir. 1960). Nor have we in this appeal anything comparable to the autobiographical [fol. 389] account of the scabrous life of a writer of some pretensions, where numerous revolting episodes were part of a text which the Supreme Court of Massachusetts (184 N.E.2d 328, 334 (1962)) accepted " * * * as a conscious effort to create a work of literary art."

What confronts us is a sui generis operation on the part of experts in the shoddy business of pandering to

and exploiting for money one of the great weaknesses of human being. Appellants' fundamental objective obviously was and is to, more or less openly, force their invitations to obscenity upon the American public through the United States mails. They did this in reliance on their own ill conceived theory that all barriers to obscenity have in effect been removed. They were not concerned with trying to circulate authentic artistic efforts that may incidentally have four letter words or nudity or sex as an integral part of a work, whatever art form it may be. Eros was declared as avowedly concerned with one thing, what in the prospectus is described as "erotica" and *which, it is stated, has been enabled to be published "by recent court decisions."* (Emphasis supplied). An undeniable example of what was meant by erotica is the content of Eros, Vol. 1, No. 4.

Seemingly to soften their approach and to pick up whatever support that might be available, appellants offer separate defenses for each of the publications. For Eros it is claimed in the brief that it "has redeeming social importance with respect to literary and artistic values". Having in mind the above proclaimed objective, even a casual reading makes it readily apparent that bits of non-statutory material have simply been laced into the obscene structure which is the Eros volume in evidence with the intent of creating that impression. This seems to us not just frivolous but a bold attempt to pioneer both in the elimination of the law itself and in the collection of the resultant profits. We have not seen nor been referred to any decision which countenances that sort of brazen [fol. 390] chicanery. If permitted, it would stultify the carefully wrought formula whereby the basic law guarding the national community from obscenity is upheld but not at the expense of honest ideas founded on at least some social importance even if it be but the slightest.

From our own close reading and scrutiny of Eros, its basic material predominantly appeals to prurient interest; it is on its face offensive to present day national com-

munity standards, and it has no artistic or social value. The sham device of seeking to somewhat cloak the content with non-offensive items falls of its own evil weight. Cf. *Kahm v. United States*, 300 F.2d 78 (5 Cir. 1962).

It is asserted that the Handbook has some social-scientific importance. Testimony along that line was expressly disbelieved by the trial judge. Our own reading and examination of this work leads us to the same conclusion. The original title to the book gives its real purpose. That title, "The Housewife's Handbook for Promiscuity" is a fitting capsule description of the content. The mere change in the title, making it sound like some sort of a text book or tract, shows the arrogant insistence of these appellants that raw obscenity is at this time properly an element of national community life. There is nothing of any social importance in the Handbook. It is patently offensive to current national community standards. Applying those standards to the average person its dominant theme as a whole appeals to prurient interest.

Appellants would have it that the book fits into the same category as "Fanny Hill", found not obscene by the New York Court of Appeals in *Larkin, et al. v. G. P. Putnam*, — N.Y.2d — (opinion filed July 10, 1964). Whatever may eventually be the outcome of that litigation, it has no bearing on this appeal for, inter alia, it was there specifically held as to the book that "It has a slight literary value and it affords some insight into the life and manners of mid-18th Century London."

[fol. 391] It is argued that *Liaison*, the newsletter, is without the statute, on the ground that it does not appeal to prurient interest. As we have seen, according to Ginzburg, the directing head of all three publications, the purpose of *Liaison* was to cover the same scope as *Eros*, in a more newsworthy fashion. Our study of it bears this out. Its material openly offends current national community standards in much the same fashion as does *Eros*. Taken as a whole, its appeal is directed to the prurient interest of the average person in the national community. The type

of thing that it is, as visualized from the test given the successful candidate for its editor, is confirmed by the material printed in it. There is no pretension that it has any social significance or literary merit.

There is defense testimony which would have it that all three publications are not within the reach of the statute. The trier of the facts was not persuaded by it nor are we.

Finding, as we do, that *Eros*, the *Handbook* and *Liaison* are obscene, affirmance of the convictions on the advertising counts follows as of course.

The contentions of appellants that the convictions on the *Eros* and *Liaison* counts must be reversed because the trial court failed to find those publications guilty within the statute are without merit. This is clear as to *Eros* in the Special Findings of Fact, Nos. 16, 17, 18, 19, the concluding paragraph of the Findings above quoted and also, though it is not necessary, in the court's opinion under the caption "*Eros* Vol. 1, Number 4, 1962." The *Liaison* Findings, which fully substantiate conviction on those counts, are Numbers 11, 12, 13, 14, 15, the concluding paragraph of the Findings and also, though it is not necessary, the court's opinion under the caption "*Liaison* Vol. 1, No. 1."

There is no substance to the complaint regarding the time of filing of the Special Findings of Fact. Rule of Criminal Procedure 23(a) provides that: "In a case tried [fol. 392] without a jury the court shall make a general finding and shall in addition on request find the facts specially."

The trial court's comment in its opinion on this point which is in strict accord with the record, is as follows:

"During the trial the Court made it clear to counsel on more than one occasion that the entry of special findings would be delayed beyond the entry of a general finding if a general finding of guilty was to be entered on any of the counts. There were no objections by defendants' counsel to this proposed pro-

cedure. Thus, any objection to the delayed entry of special findings was waived by silence on the record. Likewise after verdict was rendered by the Court, no objections were stated for the record at that time.

"On the merits, this was not an ordinary criminal case where fundamental operative facts had to be determined. Most of the facts are not clear and precise but instead are mixed with questions of law. This is the nature of the case. It is necessary in such a case for the Court to carefully consider all the legal ramifications of the factual setting, which is really largely agreed upon. Such careful consideration requires detailed legal research and assistance of counsel. Consequently, the Trial Court requested proposed findings and such other assistance as counsel could offer. Defendants were not precluded from submitting findings but apparently chose not to do so. We find no merit in this issue raised by them, apparently as an afterthought."

Under the facts the findings were filed promptly and properly within the above rule.

It is also asserted that the trial court converted evidence of criminal intent admissible against one defendant into proof of criminal intent on the part of all defendants. This concerns the two unsuccessful attempts to mail out [fol. 393] Eros advertising material. The successful mailings from Middlesex were for all three publications. The point is de minimis in any event. The stipulation between counsel for the parties and approved by the court states that the advertising material was mailed by the defendants on the occasions alleged in the indictments with full knowledge of the contents thereof. We do not find the slightest indication of any substantial confusion on the part of the trial judge with reference to the attempted mailings and mailings of the material involved in the appeal.

Appellants object to the admission of the rebuttal testimony of Government witness, Dr. Frignito. This testimony

was rightfully presented and received as rebuttal evidence. The witness' complete answer as to the effect of the Handbook makes it evident that he was considering the book's effect on the entire community, not some group thereof. We find no error in this connection.

Appellants claim error because at the time of the defense motions for dismissal of the indictment and for acquittal at the end of the Government's case, the trial judge who had read the indictment, as he says in his opinion, had not read at that time " * * * each and every word or sentence of each of the indicted materials * * *" but, as he further said, " * * * the Court read enough of the indicted materials to be able to rule as a matter of law that the Government had made out a *prima facie* case." There is no prejudicial error in this incident.

Finally, appellants urge that the court erred in striking the affidavit and exhibits in support of the defense motion to dismiss the indictment. The defense on that motion was correctly limited by the court to the face of the indictment and whether it accurately charged the named offenses and gave adequate notification thereof to the defendants. The defense attempted by the affidavit and letters to put before the court in *ex parte* form, opinions from various sources favorable to the Handbook. These were trial matters and so held by the judge.

[fol. 394] The district judge was acutely aware of the issue of constitutional law raised in this action. He was conversant with the Supreme Court's views on the federal obscenity statute and was guided accordingly. Our study of the record, including the transcript and convicted materials, establishes that he tried it fairly, carefully and competently. He made no substantial errors of law. We are convinced that, under the evidence, he was justified in finding the defendants guilty on all counts. As we have indicated, we have independently arrived at that same conclusion.

The judgments of the district court will be affirmed.

[File endorsement omitted]

[fol. 395]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 14742

UNITED STATES OF AMERICA,

vs.

RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS
MAGAZINE, INC., LIAISON NEWS LETTER, INC.,

RALPH GINZBURG, Appellant.

On appeal from the United States District Court for the
Eastern District of Pennsylvania.

Present: McLaughlin, Kalodner and Staley, *Circuit
Judges.*

JUDGMENT—November 6, 1964

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and
adjudged by this Court that the judgment of December 19,
1963 of the said District Court in this case be, and the
same is hereby affirmed.

[File endorsement omitted]

[fol. 396]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 14,743

UNITED STATES OF AMERICA,
vs.

RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS
MAGAZINE, INC., LIAISON NEWS LETTER, INC.,
DOCUMENTARY BOOKS, INC., Appellant.

On appeal from the United States District Court for the
Eastern District of Pennsylvania.

Present: McLaughlin, Kalodner and Staley, Circuit
Judges.

JUDGMENT—November 6, 1964

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and
adjudged by this Court that the judgment of December 19,
1963 of the said District Court in this case be, and the
same is hereby affirmed.

[File endorsement omitted]

[fol. 397]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 14,744

UNITED STATES OF AMERICA,

vs.

RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS
MAGAZINE, INC., LIAISON NEWS LETTER, INC.,
EROS MAGAZINE, INC., Appellant.

On appeal from the United States District Court for the
Eastern District of Pennsylvania.

Present: McLaughlin, Kalodner and Staley, *Circuit
Judges.*

JUDGMENT—November 6, 1964

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and
adjudged by this Court that the judgment of December 19,
1963 of the said District Court in this case be, and the
same is hereby affirmed.

[File endorsement omitted]

[fol. 398]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 14,745

UNITED STATES OF AMERICA,

vs.

RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS
MAGAZINE, INC., LIAISON NEWS LETTER, INC.,

LIAISON NEWS LETTER, INC., Appellant.

On appeal from the United States District Court for the
Eastern District of Pennsylvania.

Present: McLaughlin, Kalodner and Staley, *Circuit
Judges.*

JUDGMENT—November 6, 1964

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and
adjudged by this Court that the judgment of December 19,
1963 of the said District Court in this case be, and the
same is hereby affirmed.

[File endorsement omitted]

[fol. 399]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 14742 to 14745 inc.

UNITED STATES OF AMERICA,
vs.

RALPH GINZBURG, et al.,
Ralph Ginzburg, appellant in #14742,
Documentary Books, Inc., appellant in #14743,
Eros Magazine, Inc., appellant in #14744,
Liaison News Letter, Inc., appellant in #14745.

Present: McLaughlin, Kalodner and Staley, *Circuit Judges*.

ORDER STAYING MANDATES—November 17, 1964

Pursuant to Rule 36 (2) of this Court, it is Ordered that issuance of the mandate in the above cause be, and it is hereby stayed until December 7, 1964.

By the Court, McLaughlin, Circuit Judge.

[File endorsement omitted]

[fol. 400] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 401]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1964

RALPH GINZBURG, et al., Petitioners,

vs.

UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—November 27, 1964

Upon Consideration of the application of counsel for
petitioner(s),

It Is Ordered that the time for filing a petition for writ
of certiorari in the above-entitled cause be, and the same
is hereby, extended to and including January 5, 1965.

William J. Brennan, Jr., Associate Justice of the
Supreme Court of the United States.

Dated this 27th day of November, 1964.

[fol. 402]

SUPREME COURT OF THE UNITED STATES

No. 807, October Term, 1964

RALPH GINZBURG, et al., Petitioners,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 5, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.